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The Obligation to Heal & Medical Malpractice

The Right and the Obligation of the Physician to Heal

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Section 1: The Obligation to Heal

Introduction

The fundamental principles regarding the practice of medicine are based on sources in the Bible. At first glance, a fatalistic view may seem warranted: the course of the illness and its effects are predetermined by the Almighty without any possibility of human intervention. Since both life and death, and health and illness, are in G-d's hands, the physician has neither the right nor any possibility of healing the sick. Rather, since everything is predetermined by G-d, to try to outwit the divine decree is to rebel.

But one who looks more deeply at the sources in the Bible, Mishna, Talmud, early and later authorities, and in halachic literature will see that this fatalistic view is completely rejected in Jewish thought and practice. On the contrary, the physician serves as a loyal agent of the Almighty in healing the sick by means of the various medicines the Almighty puts at his disposal, his wisdom, and his medical knowledge and experience. Looking to divine assistance, the physician should proceed with a sense that he is carrying out a *mitzvah*. When he operates in accordance with the best principles of medicine, he should not fear lest he bring about an accident or injury. The physician is not only granted the right to heal; he is obliged. One who refrains from doing so is compared to one who spills blood.

This essay presents a compendium of the traditional Jewish approach to medicine.

A: The Biblical Sources

1. Sources which Imply that Healing is Only a Divine Prerogative:

- "G-d healed Avimelech" (*Gen. 2*0:17)
- "For I am G-d, your healer" (*Exod.*15:26)
- "I will remove illness from your midst" (*Exod.* 23:25)
- "Please, G-d, please heal her" (*Num.* 12:13)
- "I have smitten and I will heal" (*Deut.* 32:39)
- "Cure me G-d, and I will be healed" (*Jer.* 17:14)
- "I will restore health to you and I will heal you of your wounds" (*Jer.* 30:17)
- "For he makes sore and binds up" (*Job* 5:18)
- "Heal me, G-d, for my bones shudder" (*Ps.* 6:3)
- "O Lord, my G-d, I cried to you and you have healed me" (*Ps.* 30:3)
- "The healer of all your diseases" (*Ps.* 103:3)
- "He sends His word and He heals them" (*Ps.* 107:20)
- "He heals the brokenhearted" (*Ps.* 147:3)

2. Sources which Indicate that Healing is a Physician's Prerogative:

- "And man became a living soul" (Gen. 2:8)
  Rabbi Yossi explains: Sustain the soul which I gave you! (*Taanit* 22b)
- "He shall pay for his victim's period of incapacitation, and he shall cause him to be thoroughly healed" (Exod. 21:19)
  Rabbi Yishmael said: This verse contains the authorization for physicians to heal. (*Brachot* 60a; *Bava Kama* 85a)
- "Observe my laws and my judgments; which, if a person does, he shall live through them" (Lev.18:5)
  A physician who heals and sustains a patient is fulfilling the mitzvah of maintaining bodily health contained in this verse (Rabbi Solomon ben Aderet, *Sefer Issur V'hetter*, chapter 60, sections 8-9).
- "Do not stand idly by the blood of your brother... and you shall love your neighbor as yourself" (Lev.19:16,18)
  This verse requires a physician to provide medical assistance to save and ease the pains of a sick person who is suffering or in danger. (Responsa *Tzitz Eliezer*, pt. 15, sec. 38)
- "And your brother shall live with you" (Lev.25:36)

The physician who heals the body of a sick person, or relieves his bodily suffering, fulfills this mitzvah. (*Sefer Issur V'Hetter, loc. cit*.)

- "Take great heed for yourselves" (Deut. 4:15)
  The physician who heals a sick person fulfills the mitzvah contained in this verse. (*Sefer Issur V'Hetter, loc. cit*.)
- "If you see your neighbor's ox or his sheep straying, do not close your eyes to them. You shall surely return them to your brother.. and return it to him.. and so shall you do for every lost item belonging to your brother which he loses and you find." (Deut. 22:1-3)
  The plain meaning of the verse refers to returning a lost item. But from the repetition of the words "return them" and "return it to him" our Talmudic sages interpret the verse as referring also to a "return" of his body (to health; *Sanhedrin* 73a)
- "You may not hide yourself" (Deut. 22:3)
  Just as the finder of a lost object is not permitted to ignore it, but must take the trouble to return the object to its owner(s), so must a physician return "lost" bodily capacity to the patient by curing his malady. He must not try to evade his responsibility and hide from the sick person. (*Responsa Tzitz Eliezer*, loc. cit.)

3. The Case of King Assa

It is reported of King Assa: "And even in his illness he did not seek G-d, but rather the physicians" (*II Chronicles 16:12).*

This verse criticizes the conduct of King Assa because he should have sought G-d and prayed that He heal him. Instead, he sought a cure from the physicians. On the basis of this verse, some believe that one should not be cured by a physician. Rather, one should beseech G-d for mercy. According to this view turning to the physicians is considered a sin.

But the intent of the text may well be understood otherwise. King Assa was punished for seeking out and relying on physicians alone, to the exclusion of G-d. When a sick person trusts in G-d and prays to Him for a cure by means of a physician, it is certainly permissible to seek medical assistance. This is also the case when the malady has come at the hands of G-d.[1]

1. Rabbi Joel Sirkis, "*Bayit Chadash*," commentary of *Tur*, *Yoreh De'ah*, section 336.

4. King Hezekiah

"In those days King Hezekiah became mortally sick. And the prophet Isaiah, son of Amotz, came to him and said, 'Thus said G-d, set your house in order because you are going to die, and not live.'... and he prayed to G-d... and Hezekiah wept profusely... 'Thus said G-d, the G-d of David your father: I have heard your prayer, I have seen your tears and I will heal you. Three days hence, you will go up to G-d's house and I will add fifteen years to your life'" (*II Kings* 20:1-16.)

"King Hezekiah hid away the Book of Remedies and the Sages praised, i.e. concurred with him."[2]

Maimonides writes that some believe that the Book of Remedies was the work of King Solomon in which remedies for all types of maladies were recorded. When King Hezekiah noticed that people were no longer relying on G-d to heal them but rather on the Book of Remedies, he hid it away.

Maimonides rejects this interpretation believing it to be somewhat fanciful. It is inappropriate to attribute to Hezekiah this sort of foolishness, and it is impossible that the sages of his generation assented to such an action. Maimonides draws an analogy to a hungry person who is obligated to eat in order to allay his hunger, he should not rely on G-d for this. He should eat and thank G-d that He provided food to satisfy him. Similarly, a sick person is obligated to take medicine in order to recover, and simultaneously thank G-d for providing him with the medicine to cure his illness.

In Maimonides' interpretation, King Hezekiah hid away the Book of Remedies because it also contained many methods of preparing lethal drugs along with effective antidotes for these drugs. But the advent of unfit physicians who became immoral and used these drugs to kill prompted Hezekiah to hide the Book of Remedies.[3]

5. "Happy is he who is thoughtful of the wretched"

"Happy is he who is thoughtful of the wretched, G-d will save him on an evil day." (*Ps.* 41:2)

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2 . Mishna *Pesachim*, 4:9.

3 . Maimonides, Commentary to the Mishna, *Pesachim* 4:9.

It might be argued that since G-d has meted out an illness and has confined the sick person to bed, no one should try to seek medical assistance for him. But this is incorrect, as King David said, "Happy is he who is thoughtful of the wretched." The "wretched" refers to the sick person who, even if wealthy, is in need of a cure. Accordingly, the one who is "thoughtful of the wretched" is the wise physician and G-d blesses him.

"G-d will save him on an evil day." Even though G-d himself confined the sick person to his sickbed, it is His will that the physician try to heal him, and help free him from his illness.[4]

6. The Physician's Approach to the Patient

"He found him in a desert land, and in a desolate, howling wilderness; he encompassed him, he instructed him, he protected him as the apple of his eye. Like an eagle stirring up its nest, brooding over its young, spreading its wings, taking them, bearing them on its pinions." (*Deut.* 32:10-11.)

In the *Zohar*, a homily based on this verse is cited from the writings of one Kartinahan the Physician. It is addressed to fellow physicians: The person bedridden by illness, unaware of where to seek a cure, is like one lost in a dark and deathly wilderness, like an isolated prisoner.

What should the physician who finds him do?
"Encompass him" — Do him a good turn: Hebrew, "turn" (as in "a good turn") is based on the same root letters as "encompass" to guard the patient against potential harm caused by the illness.

"He instructed him" — Understand him in order that his illness not press heavily upon him. Here we have another Hebrew word-play: "understand" is based on the same root letters as "instruct."

"He will protect him as the apple of His eye" — *in order that he not err*, the physician is obligated to be extremely cautious about the drugs he prescribes for the patient, like a man who guards the apple of his eye. If he errs, even in one detail, G-d considers the physician to be a spiller a blood and deals with him accordingly.

"Like an eagle stirring up its nest... spreading its wings... bearing them on its pinions." Even if the physician finds no way of curing the patient's physical illness, he should at least encourage

4. *Zohar*, pt. 3, sec. 299.

him and try to offer some "medication" for his soul and spirit. G-d will bless a physician who performs in this manner, both in this world and in the next.[5]

B: The Mishna, the Talmud and the Midrash

1. Opinions of the Talmudic Sages

"Rabbi Acha stated: One who undergoes (therapeutic) blood-letting says: 'May it be your will, G-d, my G-d, that this procedure be curative and that You will heal me; for You, G-d, are a faithful Healer and Your cure is genuine.' He says this prayer since *it is not the way of men to heal* but they have adopted the practice." This means that men should not have become involved with medicine, but rather they should request mercy from G-d. Thus, according to Rabbi Acha, medicine is not specifically sanctioned by the Torah, but is rather a practice adopted by people and accepted only *ex post facto*.

"Abbaya said: A person should not take this position in light of Rabbi Yishmael's interpretation of the verse, 'and he shall cause him to be thoroughly healed.' According to Rabbi Yishmael this verse indicates that *the physician is authorized to heal."* In Abbaye's own view, the Torah granted *a priori* authorization to the physician to heal. It is not necessary therefore to rely exclusively on pleas for G-d's mercy.[6]

2. Why does Illness Occur?

Rabbi Chanina states that everything happens at G-d's behest except for "cold draughts" or "thorns and snares." The Hebrew *tzinim pachim* is variously interpreted. Rabbi Chanina is referring to both the cold and the heat. Exposure to these elements due to lack of caution can lead to colds and fever, as it is written, "Cold draughts are in the way of the crooked person; he who guards his soul shall be far from them." (*Prov.* 22:5.)

Rabbi Acha interprets the verse homiletically: "And G-d will remove every malady *from you"* (*Deut.* 7:15). "*From you,*" it is, that no illnesses will come upon you, i.e. the matter is in your hands.

Rabbi Chanina and Rabbi Natan said: "Ninety-nine die of the cold and one at G-d's behest." In other words, the cold is at the

5 . Zo*har,* pt. 3, sec. 306.
6 . *Brachot* 60a.

root of up to ninety-nine percent of all illnesses. But the Sages say: "Ninety-nine from neglect and one at G-d's behest." Even these Sages, who disagree with Rabbi Chanina and his colleague and do not consider the cold to be at the root of most illnesses, also agree that ninety-nine percent of all illnesses do not come inexplicably at the hands of G-d. Rather, they come because the individual does not protect his health and is neglectful of his body.[7]

3. Healing by a Physician is not a Violation of G-d's Will: it is a Divine Commandment

"He is under a vow not to benefit from his fellow... his fellow may heal him through a healing of beings."[8]

Maimonides understands "healing of beings" to mean that *he should heal his body.* This is not prohibited to the person under a vow not to derive benefit from his fellow because *the physician is both commanded and obligated by the Torah to heal the sick.* Consequently, the physician is not considered to have "benefited" the sick person. Rather, he is fulfilling his obligation *vis-à-vis* G-d.[9]

4. The Human Body and the Physician

Once when Rabbi Yishmael and Rabbi Akiva were walking in the outskirts of Jerusalem a sick man confronted them. He said, "My masters, tell me how I can be cured."
They said to him, "Take these medicines until you are cured."
He said to them, "But who brought this disease upon me?"
They said to him, "The Holy One, Blessed be He."
He said to them, "And you have stuck your head into a matter not your own. *He struck and you dare to heal?* Are you not violating His will?"
They said to him, "What is your occupation?"
He said to them, "I till the soil, here is my sickle."
They said to him, "And who created the field and the vineyard?"
He said to them, "The Holy One, Blessed be He!"
They said to him, "And you stick your head into something which does not concern you? He has created the field and you pick its fruits?"

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7. *Bava Metziah* 107b, *Vayikra Rabba* 16:8.
8. Mishna *Nedarim*, 4:4.
9 . Maimonides, Commentary to the Mishna, *Nedarim*, ch.4.

He said to them, "Don't you see the sickle in my hand? If I would not plow and clear and fertilize the field, it would not bring forth anything."
They said to him, "Just as the tree will die if you don't weed and fertilize the field, so also the human body. Medicines can be compared to weeding and fertilizing and the physician is like the farmer."[10]

5. Both the Physician and Medicines are Agents of G-d

It was taught in the School of Elijah that domestic and wild animals, loathsome animals and crawling creatures *were all created only as potential remedies* for mankind.[11]

Ben-Sirra said, "My son, if you have become bedridden, quickly beseech G-d so that he will heal you. And *afterwards put yourself in the physician's care because he was created for this.* And G-d allotted him some of His wisdom. Don't send him away until you are healed. Ben-Sirra said, "G-d brought forth medicines from the earth and a discerning person will not despise them. They aid the physicians to heal the malady and with the medicines the pharmacist makes up the compound."[12]

"...My son, do not become angry when you are ill. Pray to G-d that he heal you.... And also allow some scope for the physician: he will not be removed because there is a need for him. For he will sometimes succeed because he too beseeches G-d that He will make his diagnosis and treatment succeed in saving life. The one who sins before his Maker should put himself into the physician's hands."[13]

C. Views of the Earlier Authorities[14]

1. The Approach of Maimonides[15]

"The pious fool, who despises the aid of the physician and relies only on G-d's help, is like the hungry person who despises

10. *Midrash Shmuel,* ch.4.
11. *Tanna d'Bai Eliyahu Rabba*, ch.1.
12. *The Book of Ben-Sirra,* ch.38.
13. *The Book of Ben-Sirra* 38:12-14.
14. The term "Earlier Authorities" refers to the sages who lived in Europe during the Middle Ages and bequeathed a rich literature of Biblical and Talmudic commentary, Jewish thought and law.
15. Rabbi Moses ben Maimon, 1135-1205, Spain-Egypt.

bread and hopes that G-d will guard him and heal him from this illness called hunger."[16]

"The practice of medicine is an excellent way to develop the intellect and the character, and acquire knowledge of G-d, blessed is He. And when one becomes genuinely successful, his study and research are among the greatest types of service of G-d."[17]

"If Reuven is under a vow or an oath not to derive any benefit from Shimon, Shimon may still heal him because it is a mitzvah."[18]

2. The Approach of Nachmanides[19]

The verses "for I am G-d your Healer" and "I will remove illness from your midst" promise that the Jewish people will not require a physician and that illness will not come upon them under ordinary circumstances. Indeed, such was the situation *for the righteous during the age of prophecy*, as is recorded about King Hezekiah and the Talmudic sages, Rabba and Rabbi Yoseph. A physician never crossed the threshold of their houses. Were it not that people are accustomed to practice medicine, an individual would *become ill* as decreed in heaven of account on sins and *would be healed* in accordance with G-d's will and His decree. *When G-d favors a person's ways, he has no call for remedies.* Healing at G-d's behest is also thorough and complete, in contrast to the much more limited healing of the physicians. (*Exod.* 15:26, 23:25.)

Since many do not rely on heavenly healing, and are accustomed to turn to a physician for a medical cure, the Torah granted *the physician the right to heal.* And G-d left the sick person to the workings of nature so that natural i.e., medical remedies would be effective for him. Thus, the physician should not refrain from healing the sick either because of a fear lest they die at his hand or because he may say that G-d alone is the Healer of all flesh. Rather, the physician should heal because *the sick have become accustomed to turning to physicians.*[20]

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16. Introduction to *Sefer Hakatzeret*, p. 47.
17. *Shemonah Perakim,* ch. 5.
18. *Mishneh Torah, Laws of Vows*, ch.6, law 8. See also Section B.3. above where his commentary on the Mishna is cited concerning the source of the commandment to heal.
19. Rabbi Moshe ben Nachman, thirteenth century, Spain.
20. Nachmanides, *Commentary to the Torah, Leviticus* 26:11.

3. The Approach of Rashi[21]

In principle human beings should not have turned to doctors or medical practice. Rather, when ill they should have requested that G-d heal them in His mercy. But in practice, we did not merit this. Thus, the physician should not worry that he is violating the king's decree: G-d strikes, so how can I heal? For *G-d permitted natural beings* to be healed by physicians *and they carry out his will, blessed be He.*[22]

4. The Approach of Ibn Ezra[23]

The sanction which the Torah granted physicians to heal is limited to *external blows and injuries* caused by human agency. As the Torah states "If a man strikes his fellow with a rock or with his fist...he shall cause him to be thoroughly healed." (*Exod.* ch.21) However, *internal maladies* come upon a person at G-d's behest. Therefore, the physician is not permitted to heal these maladies. It is G-d's exclusive prerogative to heal them, as is written, "For He makes sore and He binds up."[24]

5. The Approach of Rabbenu Bachya[25]

Rabbenu Bachya holds the same view as Ibn Ezra, that a mortal physician should not heal an internal illness. Its cure comes only at the hand of G-d, the Healer of all flesh, and in whose hand lies the soul of every living being.

He proceeds to distinguish between healing at the hand of G-d and healing at the hand of man. In the Bible every instance of healing at the hand of a mortal physician is described using the hard or accented (plosive in this case) form of the letter "peh," e.g. *Exod.* 21:19. In contrast, every healing effected by G-d himself is written with a soft (unaccented) "feh," e.g. *Exod.* 15:26, *Jer.* 17:14, *Ps.* 147:3. The reason for this is that the cure effected by a mortal physician is accompanied by *trouble, pain and bother.* It may require the suffering involved in the taking of bitter medicine, the cutting of the body (in an operation, for example) or some other injury to the body. This is symbolized by the accent mark in the

21 .Rabbi Shlomo Yitzchaki, 1040-1105, France.
22. *Commentary of the Talmud, Bava Kama, 85.*
23. Rabbi Abraham Ibn Ezra, twelfth century, Spain
24. *Commentary on the Torah, Exod.* 21:19.
25. Rabbi Bachya Ben-Asher, fourteenth century, Spain.

letter "peh," which gives the Hebrew word "healing" a certain heaviness and harshness in *Exodus* 21:19 (a prime Biblical instance of healing by human agency). In contrast, the healing effected by *G-d Himself,* is soft since *it involves no trouble, suffering, sadness or incidental injury.*

6. The Approach of the Tosefists[26]

In opposition to the position of Ibn Ezra and Rabbenu Bachya, the Tosefists maintained that the Torah sanctioned healing of both external injuries and internal diseases in stating "he shall cause him, the guilty party's own victim, to be thoroughly healed." In Hebrew the root word "heal" actually appears twice in this phrase. If the word "heal" had appeared only once, one might have argued that sanction had only been given for healing wounds inflicted by human beings and not for internal diseases. In the latter case, the physician might have appeared to be violating G-d's will. To preclude this interpretation, the Torah repeats the word "heal". This assures us that a physician is also sanctioned to heal a blow inflicted by divine, rather than human, agency and that G-d gives him the capacity to heal.[27]

7. The Approach of Rabbi Judah HaChassid[28]

The individual who is afraid to learn and engage in medicine lest a patient die at his hand, is likened to one who kills the patient. This is so because he could have learned to heal, but refrained.[29]

D. Comments of the Later Authorities[30]

1. The Response to Nachmanides' Approach

i. Rabbi Chayyim Joseph David Azulai ("*Chida*")[31]

Even according to Nachmanides, who writes that the righteous of earlier ages sought not physicians but prophets, and waited for G-d's direct healing, the physician *is obligated to treat a patient who*

26. Thirteenth century, France
27. Commentary on *Bava Kama*, 85a, entry beginning, "it was given."
28. Twelfth and thirteenth centuries, Germany.
29. *Sefer Chassidim,* sec.1069.
30. The term "later authorities" refers to Jewish scholars working after the sixteenth century, who based themselves on the work of the "early authorities" and also examined their work.
31. Rabbi Chayyim Joseph David Azulai, eighteenth century, Eretz Israel-Italy.

approaches him. The physician should not consider whether the patient will be cured by G-d in a miraculous way. This is so because the patient himself is accustomed to rely on medical practice and not solely on G-d's healing.

Rabbi Azulai adds that in our age one should not rely on miraculous cures. The sick person must conform to the universal practice of summoning a physician to heal him. He is not permitted to violate the universal practice, and should not consider himself greater than a number of pious people of different generations who were healed by physicians. But he must, at the same time, pray for and trust in G-d's mercies.

Since there are now a great many physicians, not all of them experts, "and they have felled many," it is the sick person's obligation to seek out the most expert physician. Otherwise, he risks causing himself harm.[32]

ii. Grand Rabbi Abraham of Sochetchov[33]

He rules that not only the wholly righteous are permitted to avoid consulting physicians. Indeed, anyone who so desires is permitted to trust in G-d and not be dependent on physicians. Primarily since it is observable that some physicians have a record of causing harm, a sick person may trust in G-d and not follow the advice and instructions of physicians. Certainly, one should not endanger oneself by following the physician's unproven conjectures regarding matters of internal medicine.[34]

iii. Rabbi Zerachia Segel[35]

X-rays and other specialized equipment are able to show the internal organs clearly, treatments have been tested and since there is a reasonable chance of success, a sick person should certainly do everything possible which accepted medical practice dictates. But of course, while doing so one may not take his mind off G-d, on Whom everything depends. He must request of G-d in His mercy, that a cure be effected by means of the physician, since everything is in the hands of the Creator. It may well be that Nachmanides' conviction that the wholly righteous person who

32. *Birkei Yosef,* Commentary on *Shulchan Aruch, Yoreh De'ah,* sec. 336, para. 2-3.
33. Nineteenth century, Poland.
34. *Responsa Avney Nezer, Choshen Mishpat*, sec.193.
35. Tel Aviv, 1982.

trusts in G-d should refrain from turning to a physician, only applies in the case of medical *hypotheses.* But where the matter is *clear* from a medical standpoint, it is as if G-d clearly wills to cure the disease through the natural method which He has made available. G-d does not effect a miracle when one can be helped in a natural way. Consequently, there is also an *obligation to heal.*[36]

2. Comments on the Approach on Ibn Ezra and Rabbenu Bachya

i. The approach of Ibn Ezra and Rabbenu Bachya who limit the physician's right to heal to external injuries only is problematic. In a number of places, the Talmud records the Sages' instructions about how to heal different diseases, most of them internal. Similarly, the Talmud[37] tells of the Sage Samuel, the doctor of Rabbi Judah the Prince, who healed Rabbi Judah's ailing eyes. It cannot be that these sages ruled and acted against Torah law.[38]

ii. A great sage of our nation (Ibn Ezra) sought to distinguish between a blow delivered by man and a blow delivered by G-d. He interpreted the phrase "he shall cause him to be thoroughly healed" as sanctioning the healing only of the former. But the nation has not followed him; it is unacceptable to leave man to the course of nature. If the physician be expert, the patient should trust in G-d that he will be helped through a diagnosis of his illness, and then through the physician forbidding the intake of substances which aggravate it and prescribing other substances which are beneficial — whether they be types of food or medicines.[39]

3. Rabbi Jonathan Eibeschütz[40]

He also follows Ibn Ezra in distinguishing between external injuries and internal illnesses. But he does not completely reject the physician's sanction to heal internal illnesses. He claims that in the verse "he shall cause him to be thoroughly healed," the Torah referred to external injuries such as a broken hand, a wound or a bruise, those which are easy for the physician to diagnose. *Healing them is an exact science, like engineering*. This is not the case with

36. *Shana Beshana,* (1982), p. 204.
37. *Bava Metziah,* 85b.
38. *Sefer Mateh Moshe,* cited in *Sefer Assia,* Vol. 2, p. 64.
39. Rabbi Menachem ben Aharon, *Tseidah Laderech*, article 5, topic 2, ch. 2.
40. Eighteenth century, Prague-Hamburg.

diseases of the internal organs to which the eye of the physician does not have access. Thus, the physician is not able to make a clear diagnosis, just a hypothesis. Indeed, there have been many physicians who tried to cure various internal injuries and caused fatalities. In order to cure these diseases, the physician requires great composure and deliberation, and a great deal of caution, so as not to make a mistake and injure the patient.[41]

E. Further Comments of the Later Authorities

i. Rabbi Nissim Abraham Ashkenazi[42]

A person must protect himself from the cold and the heat, and from other potentially harmful conditions. He who does not and takes the position that if G-d does not decree evil for an individual, no mishap will befall him, is a pious fool. Similarly, with regard to healing: *G-d runs the world according to nature.* A specific drug will cure a certain illness. Similarly, some kinds of vegetation, roots, resins and special leaves are effective in a natural way; others in a supernatural way. Some are effective only in combination with others. Indeed, a number of remedies are recorded in the Talmud. Furthermore the Sages said in Sanhedrin, "A Torah scholar may not live in a city which has no physician." In addition, we know that it is permissible to set aside the laws of Shabbat in order to heal a person who is dangerously ill.

One is not to follow the example of righteous individuals who were cured by means of prayer or petitions of mercy. Those who put themselves outside the rule of nature are people of great power and merit. I have seen that such people are few in number. And even they would not have waited for a miracle had a miracle not spontaneously occurred to them. They too would have sought help within the framework of nature.

The physician has the right to heal even an illness which comes at the hand of G-d. That is, if he is an expert and a specialist. But if he is not well-qualified, he is forbidden to engage in healing because he may very likely harm the patient.

41. *Sefer Kreiti U'Pleiti*, sec. 188, para. 5.
42. Eighteenth century, Turkey, *Sefer Ma'a'se Avraham*, pt. *Yoreh De'ah*, sec. 55.

ii. Rabbi Abraham Isaiah Karelitz ("*Chazon Ish*")

In serious cases, where the body's own defenses cannot successfully fight off the cause of the illness, the patient requires external aid. The Creator has provided an abundance of vegetation with a variety of curative powers. And He has given the wise person the wisdom to examine their various capabilities and to know *the science of healing* and the use of curative vegetation and other substances, each type for its own particular purpose. We have become accustomed to these usages of medicine for treating all bodily illnesses.[43]

F: Why Must the Torah Grant Permission to the Physician to Heal?

In different generations and locations, our Sages have raised this problem and have offered a variety of different solutions.

1. Nachmanides

a. Lest the physician ask himself: "Why should I take on all the trouble of getting involved in healing the patient. Perhaps I will make a mistake and the patient will die accidentally at my hand." Therefore, the Torah had to grant *permission* to the physician to heal. If he is sufficiently careful and a "skilled physician" (qualified), he is not culpable in the event of injury.

b. Lest the physician say to himself: "Since G-d has brought this illness to the person, how can I heal him?" Therefore, the Torah granted permission to the physician who understands medicine and its practice to use these natural methods and drugs to heal disease. Since people have become accustomed to using medicines, and since the Torah has sanctioned their use, the physician has not only the *license* but also the great *mitzvah* of saving life. The physician is not merely permitted to heal an illness, he is *obligated* to do so.[44]

2. Rabbi Nissim Ashkenazi

With regard to a medical procedure in which the patient does not endure any pain or trouble, unlike intake of bitter medicines, bloodletting, or cutting or severing a part of the body, no special

43. *Emunah U'Bitachon,* ch.1, sec. 6.
44. Nachmanides, *Torat HaAdam,* part entitled "Danger."

Biblical license is required. This is so because it is similar to G-d's way of healing, which is not accompanied by pain and does not bring additional suffering. But, without Biblical license, we would have thought that it is forbidden for a mortal physician to administer a cure which is accompanied by great pain. [45]

3. Rabbi M. A. Danateh[46]

a. If the patient refuses treatment because he has lost his mental balance, or is very frightened, or suffering, the physician is still obliged to heal him. This case is applicable when the physician knows that this treatment will be good for the patient. The physician should not heed the patient's refusal (even, for example, in the case of an operation). In the end, the patient will recognize that this is for his own good.

b. The Torah has only sanctioned healing but it is forbidden for a physician to administer a lethal drug to a patient who is suffering and has come to loathe life. In this case, the physician must trust that G-d will deal with the patient in accordance with His will.

c. The physician fulfills the mitzvah to heal only if he does so without charge. But if he charges a fee, especially if the fee is higher than the amount he would be earning for the same expenditure of time in another field, then the physician is not fulfilling a mitzvah. He is only exercising the license granted him by the Torah.[47]

4. Rabbi Abraham Yitzchak Kook[48]

If medical treatment were certain to be effective, it would be inconceivable that the physician is not sanctioned to heal, even where the malady came at G-d's hand. This is clear from the verse, "Do not stand idly by the blood of your brother." Since one is obligated to heal in every case, there would be no room to argue that since G-d struck the person, no one is sanctioned to save him.

Rather, the necessity of a special verse to permit the physician to heal is derived from the fact that the fundamentals of medicine are not entirely clear, and all medical wisdom is based on uncertain

45. *Ma'a'se Avraham,* vol. II. Pt. *Yoreh De'ah*, sec. 55.
46. Nineteenth century, Czechoslovakia.
47. *Dibburei Emet,* Part "*Yoreh De'ah*", sec. 336.
48 . Chief Rabbi of Palestine, 1865-1935.

assumptions. Thus, there is some doubt surrounding every medical treatment as to whether it will be salutary or harmful. For this reason, the Torah had to grant special permission to the physician to practice medicine, the only methods of healing at man's own disposal.[49]

5. Rabbi Eliezer Yehuda Waldenberg[50]

a. The verse "he shall cause him to be thoroughly healed," which permits the physician to heal, teaches us that the physician may also administer drugs for easing the patient's severe pains. He may do so even if the drugs might harm the patient and even if they entail a risk of hastening his death, because nothing is more arduous for a person to endure than suffering. Thus, the giving of drugs to ease pain is itself considered healing. Again, it is permissible to give these even at the risk of hastening the patient's death.[51]

b. The duplication of the verb "to heal" in the verse which sanctions healing (*Exod.*21:19) teaches us that the physician is obligated to heal both an infectious and non-infectious disease. Even though a physician may possibly put himself in danger by exposing himself to an infectious disease, he is still obligated to treat it after taking all possible precautions. He is not permitted to refrain from treatment for fear that he will get infected. The Sages promise the physician that if he will act with G-dly motivation, nothing evil will befall him.[52]

c. When the patient's life is in danger, the physician must, of course, treat him in order to save him. But the duplication of the verb "to heal" in Exodus 21:19 teaches us that a physician fulfills a mitzvah and an obligation, even in healing a patient who is suffering or injured in one part of his body and not in mortal danger.[53]

G. The Mitzvah to Heal

The Torah granted the physician *permission* to heal, and *this is a mitzvah*.[54]

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49. *Responsa Da'at Cohen,* sec. 140.
50. Judge in the Rabbinical High Court, Jerusalem.
51 .*Responsa Tzitz Eliezer,* pt. 13, sec. 87.
52. *Responsa Tzitz Eliezer,* pt. 9, "Medicine" ch. 5.
53. *Responsa Tzitz Eliezer,* "*Ramat Rachel*," ch. 21, sec.2.
54. *Shulchan Aruch, Yoreh De'ah*, sec. 336, para. 2.

Rabbi David Samuel Halevi,[55] in his commentary on the *Shulchan Aruch* asks, if healing is a mitzvah why is the term *permission* invoked first?

Rabbi Halevi explains that true healing comes at the hand of G-d in response to a plea for mercy in prayer. This is the meaning of the verse cited at the beginning of this essay, "I have smitten and I will heal" (*Deut.* 32:29). But because most people do not merit this, they need to be healed in a natural way. G-d Himself assented to this method and implanted in nature the capacity to heal. This is the meaning of granting *permission* to the physician to heal. And since the sick person has reached the point where he needs a physician, the latter has an *obligation* to heal him. This obligation is the mitzvah to heal mentioned in the *Shulchan Aruch.*

Rabbi Joseph Shaul Nathanson[56] clarifies further. Had the Torah not granted permission to the physician to heal, it would have seemed that the physician wanted to change the Creator's creation. But since the Torah did sanction healing, it is, at root, a fulfillment of the mitzvah of saving human life.[57]

H. Why Doesn't the Physician Utter a Blessing Upon Fulfilling the Commandment to Heal?

If healing is a mitzvah, as Maimonides rules, why does one not utter a blessing as one does on other mitzvot?

Since this mitzvah of "returning lost bodily capacity," i.e. healing, is done to prevent and remove danger, it is classed with mitzvot directed against danger, all of which require no blessing.[58] It is wrong to prolong prayer in the face of danger to life. Rather, one should hasten to save life. This is the intention of the Talmud[59] "Is it possible that Israel is singing while the King is sitting on His throne with the Books of Life and Death open before Him?" Similarly, the Midrash[60] asks: "Why did Moses not prolong his prayer for the welfare of his sister Miriam stricken with leprosy?

55. Seventeenth century, Poland.
56. Nineteenth century, Galicia, author of *Shoele U'Meishiv.*
57. *Sefer Divrei Shaul Yosef Da'at* on the Code of Jewish Law, part, "*Yoreh De'ah*" sec. 336.
58. *Mishneh Torah,* Laws of Blessing, ch. 11, para. 4.
59. *Rosh Hashanah*, 32b.
60. *Tanchuma, "Tzav."*

He did not do so in order that the Jewish people would not wonder why Moses was praying at length while his sister was in travail."[61]

I. Is the Physician who Earns a Living From Treating the Sick Considered to be Fulfilling the Mitzvah?

With regard to a physician who earns a living from treating patients in accordance with accepted medical practice: Is he considered to be fulfilling a mitzvah even though he is motivated by the anticipated profit and not by the desire to perform mitzvot?

The *Shulchan Aruch*[62] rules that persons on their way to redeem captives and persons on similar missions, are considered to be involved in the performance of a mitzvah. The commentary *Biur Halacha* limits this to the case where those on the mission are deriving no personal benefit. But if they are being remunerated and their primary motivation is to profit and support themselves, then they are not considered to be engaged in a mitzvah.

However, one ought to distinguish between this type of case and that of a physician. Even though the physician works for a fee, without which he would not treat the sick person, *his activity is essentially the performance of a mitzvah.* For this reason, and because he wants to heal while practicing medicine, and not just earn money, he is considered to be actively engaged in fulfilling a mitzvah. This is not true of one who is not directly involved in a mitzvah actively, but aids and prepares the way for the fulfillment of the mitzvah. If such a person's primary motivation is to earn money, then he is not considered to be engaged in a mitzvah. However, if his motivation is based equally on profit and on mitzvah observance, he is still considered to be engaged in a mitzvah. This distinction is evident from the commentary *Mishna Brurah.*[63]

A story is told about the *Chafetz Chaim* (Rabbi Israel Meir HaCohen) who entered a pharmacy to purchase a medication. He said to the pharmacist, "I envy you for the many mitzvot which you merit daily." The pharmacist answered, "But my intention is simply to earn a living." The Rabbi responded, "If so, listen to my advice and you will merit a great blessing. Combine this intention of

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61 .Rabbi Solomon Hilperin, *Sefer HaRofim*, sec. 1, Bialistock, 1923, rpt. *Sefer Assia,* vol. 2, pp. 58-79.

62. *Orach Chaim*, sec. 640, para. 7.

63. Sec. 38, comment #24, citing the commentary "*Magen Avraham*."

earning a living with the intention that the sick people will be fully cured through the medicines you sell. If when selling you think both of earning a living and the *mitzvah of healing the sick*, every act you do during the day will be considered a mitzvah and you will be blessed."

In the *Tosephta* we see that even when a person has not performed a mitzvah in its entirety, he still earns a partial reward for his incomplete act. If a person loses a coin which is found and used by a poor person, the loser gains a small reward in Heaven since the poor ultimately benefited from his money. We see that the mitzvah of giving charity is fulfilled, albeit in a partial manner, even without intention to perform a mitzvah. Similarly, the physician who heals a sick person, even without intending to perform a mitzvah, is automatically performing the mitzvah of charity and lovingkindness. For this mitzvah, he receives some reward.[64]

Section 2: Negligence in Withholding Medical Assistance

A. Prohibition to Withhold Medical Treatment

The *Shulchan Aruch* rules that a physician who refrains from treating a sick person who turns to him is a spiller of blood.[65]

Maimonides writes that the Torah warns us against being negligent in saving life when we see someone in danger and have the capacity to save him. This warning is contained in the verse, "Do not stand idly by the blood of your neighbor." (*Lev.* 19:16) Because this prohibition involves no sin of commission, only omission, the punishment for transgressing is limited. But this does not lessen the severity of the prohibition, as Maimonides writes, "Although the punishment of lashes is not meted out for passively violating a prohibition, such a violation is still serious: 'One who destroys a single human life is considered as if he has destroyed the entire world.'"[66]

The analogy between a physician who declines to exercise his ability to save a sick person and a killer is derived from the verse,

64. Rabbi Yitzchak Zilberstein, contemporary oral ruling.
65. *Shulchan Arch, Yoreh De'ah*, sec. 336, para. 1.
66. *Mishneh Torah,* "Laws Pertaining to a Killer," ch.1, sec. 16; *Sefer HaMitzvot,* Negative Commandment #297; also in *Tosephot HaRosh* of *Rabenu Asher*, *Brachot* 60a in the name of Rabbi Jacob of Orleans.

"On the day that *you stood aloof,* on the day that strangers took captive his substance, and foreigners entered into his gates, and cast lots on Jerusalem, then you too *were one of them.*" (*Obadiah* 1:11) This refers to Edom who was standing aloof, without offering assistance when the Jewish people were in trouble, facing the enemy at its gates. In the words of the prophet, this position renders Edom a participant in the assault on the Jewish people and the razing of Jerusalem.[67]

Rabbi Judah Ayash[68] holds that a physician who is not an expert in the field should not practice medicine. If he does so regardless and causes harm, he is liable to the full extent of the law. Similarly, an expert physician who withholds medical treatment is liable for any harm, even death, which comes to the patient.[69]

But Rabbi Isaac ben Sheshet[70] writes that the Sages made use of hyperbole, magnifying the seriousness of sin in their characterizations. In this case, they did not literally mean that a physician who withholds medical treatment is like a killer. They used this expression to emphasize the seriousness of the matter.[71]

A patient has special confidence in his own physician. Thus, if he turns to his regular physician despite the fact that there are others available to treat him, he should not be refused. Not every physician may succeed in curing him: a personal connection and faith in the physician are important factors in the healing process. Thus, the obligation falls specifically on the physician to whom the patient turns.[72]

B. Withholding Medical Treatment because of the Patient's Failure to Pay

The medical oath of the sixth-century physician Asaph contains the following warning: "Do not harden your heart against showing compassion for and healing the wretched and the poor."[73]

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67. Rabbi Meshulam Roth, early nineteenth century, Israel, *Responsa Kol Mevasser*, pt. 1, sec. 47.
68. Eighteenth century, Algeria.
69. *Shevet Yehudah,Yoreh De'ah*, sec. 336, para. 1.
70. Fourteenth century, Spain.
71. *Responsa HaRibash,* sec. 171.
72. Professor Shimon Glick, "The Jewish Physician," *Assia,* no. 35 1983, p.7. The presentation is based on the *Shulchan Aruch*, *Yoreh De'ah*, sec. 336, para. 1.
73. From the Oxford manuscript, reported in *Sefer Assia*, Vol. 1, p. 258.

Rabbi Chaim Joseph David Azulai[74] believes that the Talmudic statement "the best of the physicians are destined for hell" refers to physicians who withhold treatment from patients unable to pay in full. By so doing, they may sometimes cause the death of a sick and indigent person.[75]

C. Withholding Medical Treatment Due to the Physician's Fear that He May Err and Do Harm

Rabbi Azulai writes that, in principle, a physician should not fear lest he err and cause injury. On the contrary, he should try to heal to the best of his ability. The Torah emphatically permits the physician to heal for this very reason. However, the law may possibly permit a physician to refrain from healing because of these fears. Rabbi Azulai has difficulty in deciding this point and therefore does not issue a ruling. He writes that each case will depend both on the particular circumstances and on the patient himself. In some cases the physician is absolutely barred from withholding treatment, while in others, he may. But the author does not delineate with the cases or the conditions.[76]

D. Delay in Providing Medical Treatment

When a patient comes to a physician, the latter should not cause him unnecessary delay by forcing him to wait until he leisurely finishes his drink or ties his shoe or puts on his coat etc. He should treat him promptly. Certainly in urgent cases, the physician should not delay at all.

We understand this imperative from the warning addressed to a judge, he is forbidden, "to delay the judgment, i.e. to force the litigants to wait. The midrash[77] tells of Rabbi Shimon's query to his teacher as he was being taken out to be hanged during one of the Roman persecutions, "My heart is sinking because I don't know why I am being executed as a punishment from G-d." His teacher replied, "Has a person ever come to you for a judgment whom you have put off until you finished your drink or laced up your sandals or put on your outer garment?" The Torah says, "if you afflict..." there is no difference between a large or a small affliction (i.e., in

74. Eighteenth century, Eretz Israel.
75. Cited by Prof. Steinberg in "The Doctors' Strike," *Assia* 21, 1978, p. 17.
76. *Birkei Yosef*, *Yoreh De'ah*, sec. 336, para. 5.
77. *Mechilta*, *Mishpatim*.

using a doubled form of the Hebrew verb "to afflict," the Torah prohibits causing even a minute affliction.) Rabbi Shimon responded, "You have comforted me, my teacher."

The Mishna[78] contains the same idea, "The sword comes to the world because of delaying judgment." If such a statement is made with regard to judges, it applies all the more so with regard to physicians who are engaged in saving lives. If a physician "delays the judgment," i.e. delays medical treatment, he may miss the opportunity to save the patient's life.[79]

E. A Physician who Withholds Treatment from a Sick Person because it is Beneath His Dignity to Treat Him

Rabbi Moses Dov Vilner[80] notes that the mitzvah of returning a lost article allows an exemption for an elderly person whose dignity would be compromised by returning the article. Such a person does not violate the Biblical prohibition, "You may not ignore." According to Maimonides, the mitzvah of healing is learned from the (contiguous) verse "and you shall return it to him" which includes the return of his body (i.e. the body's functioning). If so, it might seem that the physician should have the same prerogative: if treating a certain patient is beneath the dignity of a prominent physician, perhaps he should be exempt from treating him.

This reasoning is untenable for two reasons:

a) Besides the physician's obligation to heal, there is also an obligation which is derived from the mitzvah "Do not stand idly by the blood of your neighbor." An elderly person is not exempt from this mitzvah even if it is not in keeping with his dignity.

b) Logic dictates that the elderly person is exempt from fulfilling the mitzvah when not in keeping with his dignity only in the following circumstances: when the lost article is such that had it been his own, the old person would not have troubled himself to retrieve it on account of his dignity. But if he would have taken the trouble for himself, he must also do so for his neighbor. In the case of illness, a person would give everything he owns to save himself.

78. *Avot*, 5:11.
79. *Assia,* vol. 2, p. 69.
80. Ashkelon, Israel.

Therefore, he must also be involved in saving his neighbor even if this is not in keeping with his dignity.[81]

F. A Physician who is Called on by Patients During his Rest Hours

Rabbi Obadia Hadaya[82] was asked by a physician how he should respond to patients who called on him at all hours of the day and night. Should he interrupt his rest in order to receive them lest he be considered a killer by the standard of the *Shulchan Aruch* which likens one who refrains from healing to a spiller of blood?

The author cites another rabbi who bases his argument on the principle that one must give all he has to avoid transgressing a Biblical prohibition. Accordingly, the physician would be obligated to interrupt his meal or his rest in order to treat the patients who call on him. Even if by so doing he will later become weak and unable to continue treating patients, he must still do everything incumbent upon him as long as he can, regardless of the price. If, later, he grows too weak or tired to carry on, he is then considered a victim of circumstances and is exempted by the Torah.

But Rabbi Hadaya rejects this argument by claiming that a Jew has to give everything he has to avoid transgressing a Biblical prohibition only when people are actively trying to force him to transgress the prohibition. But here, there is neither an issue of religious persecution nor an active transgression of withholding assistance to the sick. Furthermore, there is no certainty regarding the spilling of blood here, just a (remote) possibility that a patient would become dangerously ill and die. Under these circumstances, where the patient is not known to be dangerously ill, one is not obligated to exhaust all his resources to avoid a transgression. And one is certainly not obligated to injure oneself in order to treat a sick person. In our case, if the physician were to be forced to receive every patient who calls on him at all hours of the day and night, he himself would grow weak and endanger his own life. On this point the Sages have declared, "Your life takes precedence!" Because the Torah's "ways are ways of pleasantness and all its paths are peaceful," we do not find the Torah obligating a person

81. *Responsa Chemdat Tzvi,* vol. 2, *Yoreh De'ah*, sec. 19.
82. First half of twentieth century, Jerusalem.

to sacrifice himself to this extent in order to save his fellow. The statement in the *Shulchan Aruch* which likens one who withholds medical treatment to a spiller of blood refers specifically to one who does so out of contempt, without any reason.[83]

G. Is a Physician Permitted to Abandon his Post During a Strike Called to Protest Unfair Salaries?

Rabbi Shlomo Goren (former Chief Rabbi of Israel) addressed this problem in the context of the doctors' strike in Israel. First, he observed that the Jewish physician faces difficult moral dilemmas heightened by the general moral responsibility incumbent upon physicians as those responsible for the publics' health and loyal to the code of medical ethics and the Hippocratic oath. Is he permitted to abandon the hospitals and clinics where he works and thereby forsake the patients who have nowhere else to turn? Clearly, the limited staff remaining on duty in the hospitals is unable to provide most of the medical services needed by patients.

It may be possible to argue that since suitable medical care is available for a special fee, the physicians are not personally obligated to carry out the mitzvah "Do not stand idly by the blood of your neighbor." Rather, responsibility for the physical welfare of the public falls on the government, its ministers, and those who oversee public health. If we assume that the physicians' claims against unfair salaries are justified, then they may well argue that *they* bear no obligation to the sick, either contractual or moral. The obligation rests on the Health Department or the various Health Insurance Funds to which members pay a fee in exchange for the Funds' obligation to provide medical care. But the physicians themselves may be exempt from any obligation as long as their employers are not fulfilling their obligations to them.

But even this argument is tenable only where it is possible to obtain (alternative) medical care for a fee. If, however, physicians also shut down the clinics for pay-as-you-go medical services, and retreat to unknown locations, the situation is more serious. Indeed, this happened during the last large doctors' strike in Israel. By using such a tactic, physicians neglect both of the mitzvot incumbent upon anyone capable of offering assistance to save his fellow man: "And you shall return it to him," i.e. returning the full use of

83. *Responsa Yaskil Avdi*, Vol. 6, *Yoreh De'ah*, sec. 18.

his body, and "Do not stand idly by the blood of your neighbor." But in spite of all, perhaps it is still possible for the physicians to make a tenable argument for their lack of personal responsibility. As long as the authorities charged directly with the responsibility for public health can rectify the situation by paying suitable wages, they cannot place the responsibility on the physicians.[84]

Rabbi Goren considers the issue at length and in detail, including direct and indirect implications. Among other points, he takes up the nature of the obligation to heal and the problem of the physician's salary. Regarding the recent doctors' strike he distinguished between the first and second phases. In the first phase, physicians did not abandon their posts altogether, but provided medical assistance at special pay-as-you-go clinics instead of the regular framework of hospitals and Health Fund clinics. Their action coincided with the ruling of halachic authorities that a physician is permitted to collect a fee from every patient able to pay, and to make the treatment conditional on payment. It stands to reason that most of those hospitalized and insured by the Health Funds would be considered able to pay, because the Health Funds were obligated to reimburse them for the fees.

Regarding the second phase of the strike, however, physicians failed to fulfill their personal responsibility when they left their posts entirely. Because of the mitzvah of saving life, this responsibility cannot be waved off by reference to the direct responsibility of the public authorities. There is no way to ignore this sacred responsibility, which is based on the verse "Do not stand idly by the blood of your neighbor," and obligates the physician to come to the aid of the sick in need of his care. Indeed, the verse obligates every individual, regardless of whether he bears formal responsibility, to come to the aid of someone in trouble. Where there is danger to life, or even the possibility of a person's health being impaired, every individual able to render assistance should do so, even if the responsibility for the sick person's health falls on another party. Physicians are, however, permitted to make their return to full regular work conditional on their employers meeting their justified monetary claims. And the courts should help them obtain proper working conditions.[85]

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84. On the subject of ministerial responsibility for the field covered by each government minister's office, see *Sefer Prisha, Yoreh De'ah*, sec. 336; *Shabbat* 54b.

85 ."The Doctor's Strike," *Assia,* no. 39, 1984, pp. 32-45.

Source: The Schlesinger Institute for Jewish Medical Ethics