



No Permission, No Problem?

Patient autonomy is a fundamental principle of ethical patient care. This autonomy is an outgrowth of modern values of human dignity and individual liberty that grant a person freedom of choice (but also on the legal concept that a person “owns” his body) and form the basis of a basic rule of patient care, namely, the obligation to obtain a patient’s consent or respect his right to decline medical care.¹

The first element of patient autonomy is unquestionable. Medical practitioners are required to update a patient on his medical condition in detail, without concealing any information. Additionally, before a patient consents to any form of medical procedure, he must be notified of the possible risks and benefits, as well as alternative therapies, in order that he will be able to make an informed decision.

The second element subjects medical staff to the patient's sole decision as to his medical treatment. This is the basis of a significant distinction between medicine and Halacha. Halacha does not recognize some of the principles upon which patient autonomy is based, therefore, its approach to treatment against a patient's will is significantly different. This essay will discuss this distinction; next week’s essay will discuss cases when Halacha does recognize a patient's right to refuse medical treatment.

As this essay will focus on the fundamental principles, we will begin with a case where refusal of medical treatment will endanger the patient, there is consensus among the medical team that the treatment is necessary and efficacious, and there is minimal risk involved. Even in cases like this, patients may refuse treatment for a variety of reasons that are not related to medical considerations. How should a situation like this be handled?

The *Magen Avraham* (O.C. 328:6) rules that if a patient is dangerously ill, to the extent that it would be permissible to desecrate Shabbos to administer a certain medication, and he refuses to comply (seemingly due to a reluctance to be *Mechalel Shabbos*), he should be compelled to take the medication.

¹ Aside from extreme cases such as emergencies, incapacitated patients, or situations where the patient’s participation may harm his health.



The *Magen Avraham's* ruling is based upon the *Radvaz* (4:1139) who was asked about a patient considered dangerously ill by his doctors and for whom Shabbos should be desecrated. The patient does not want Shabbos to be desecrated on his account. Should we consider his position "*Midas Chasidus*" (excessive piety) and comply with his request or not? The *Radvaz* replied:

He is a pious fool, and God will hold him accountable for his life. The Torah instructs, "And you shall live by them – and not die by them"... in short, I do not see any piety in this act, but a destruction of life. Therefore, they should force-feed him [the medications] or compel him to comply with their recommended treatment diagnosis. Those who ask whether or not to compel him are themselves spilling blood. This is obvious.

The *Ya'avetz* (R' Yaakov Emden, *Mor u'Ketzia ibid.*) maintains that the *Magen Avraham* was referring to "*Refua Vada'is*" – a proven cure (treatment based on medical consensus is considered *Refua Vada'is*). The patient's intransigence was only due to *Chilul Shabbos*, not because there was any cause to question the efficacy of the treatment.² Many later Poskim cite his words:

*Only with regard to an **illness or injury about which the physician has certain and clear knowledge**, and where the medication is proven and effective, **do we categorically compel** a recalcitrant patient if his life is in danger. This includes all elements of medical treatment which the Torah granted the physician permission to administer, such as widening the opening of a wound, removing pus, binding a broken limb, and even performing an amputation (to save his life), placing a bandage, treating a bruise or fresh wound, administering liquids that cause perspiration or foods that are conducive to good health, nutrition, or which cleanse [his system], if they are proven and tested to help and not cause harm. All of these [treatments] should certainly be performed for him, and he should be forced to accept them to save his life. We do not pay attention to him if he doesn't want to endure suffering and chooses death over life. Rather, we [even] amputate one of his limbs if it is necessary to save him from death and we do everything that is necessary for *Pikuach Nefesh* **against the patient's will**. Every person is obligated to do so due to the precept of "do not stand [idly] by the blood of your fellow". **The matter does not depend on the will of the patient – he has no permission to forgo his life.***

² Next week's essay will elaborate on this.



Clearly, according to the *Ya'avetz*, it is only justified to treat a patient against his will when his life is in danger. All types of treatment or surgeries are permissible in that case, even if they will cause him suffering and pain, or even permanent disability.

This is due to the prohibition of "*Lo Sa'amod Al Dam Rei'echa*" which is a universal obligation. The patient has no right to oppose the treatment as he does not have the authority to forgo his life.

The question of applying "*Lo Sa'amod Al Dam Rei'echa*" in this case is similar to the question of saving a person from a suicide attempt, discussed at length by the *Acharonim*.³ The Gemara (*Sanhedrin* 73a) cites two sources for the obligation to save a person's life. The first is the Mitzva of *Hashavas Aveda*, which also includes an obligation to restore a person's health or life. The second is "*Lo Sa'amod Al Dam Rei'echa*".

The *Minchas Chinuch* (*Mitzva* 237) asserts that there is no obligation to save a person making a suicide attempt, neither from the perspective of *Hashavas Aveda*, nor "*Lo Sa'amod Al Dam Rei'echa*". However, the vast majority of the Poskim strongly disagree, arguing that while a person is certainly the owner of his monetary possessions (and thus may discard them), his body is owned by Hashem and he is obligated to guard it from harm and has no right to discard it.⁴

In our case, the patient's objection to lifesaving medical care is akin to an act of suicide. Therefore, the obligation to save his life absolutely remains in place.

Some cite the *Tosefta* (*Shekalim* 1:6) as a source for this ruling:

When they [the moneychangers] sat in the Beis haMikdash, they began to force the Jewish people to contribute their Shekalim so that they could be used for the public Korbonos. This may be compared to a person who has an injured foot whom the doctor ties down and cuts his flesh in order to heal him. Similarly, Hashem says, "Force the Jewish people to contribute their Shekalim so that they may be used for the public Korbonos. For the public Korbonos draw favor and atonement for Yisrael from their father in Heaven.

³ See our essay to *Parshas Kedoshim* 5779 - <https://www.medicalhalacha.org/torah-archive>

⁴ See the *Rambam*, *Hilchos Rotzeach* 1:4 and the comments of the *Radva"z* to the *Rambam*, *Hilchos Sanhedrin* 18:6.



Clearly, the *Tosefta* holds that a patient may be compelled to accept medical treatment.

The Rambam (*Peirush haMishnayos, Nedarim 4:4*) states that “a physician is obligated by Halacha to treat the sick of Israel. This is based on Chazal’s assertion that the verse ‘and he shall return it to him’ includes [restoring] his body”. The *Tzitz Eliezer* (15:40) maintains that the Rambam clearly implies that “the obligation is even when he is able to compel someone who doesn’t understand or doesn’t bother to seek treatment to agree to the required treatment, **or even to take him to be treated against his will.**”

The *Chiddush* of the *Tzitz Eliezer* is that a patient can be compelled to receive appropriate medical treatment even if his life is not in danger. He makes a similar case elsewhere (17:2).

However, it would be simpler to distinguish between cases of *Pikuach Nefesh* and regular medical treatment. When a patient’s life is in danger there is an obligation of “*Lo Sa’amod Al Dam Rei’echa*”. But where there is no danger, the obligation to treat him is only based on the Mitzva of *Hashavas Aveda*. It is likely that the patient’s wishes should be respected in the latter case. Though it is certainly a Mitzva for the physician to treat him, we cannot necessarily conclude that he may do against the patient’s will.

Some argue that since the patient is obligated by the Torah to guard his health and do all that is necessary to save his life, he may be compelled to accept medical treatment due to the rule of “*Kofin Al haMitzvos*” (compelling people to perform Mitzvos). However, the Poskim apparently did not need this reasoning to conclude that a patient can be compelled to accept medical treatment. It is enough to say that he does not own his body and that others have a duty of “*Lo Sa’amod Al Dam Rei’echa*”, as explained above. Moreover, some hold that *Kofin Al haMitzvos* can only be applied by Beis Din, not laypeople. There are also other reasons why it may be inapplicable to medical treatment.

In spite of all of the above, the Poskim discuss a broad spectrum of cases in which a patient’s request to refrain from medical treatment should be heeded. The premise of the discussion is that treating a patient against his will is only permissible when there is medical consensus about the effectiveness of the treatment, and the risk posed by it, both to life expectancy and quality of life, is minor, and the patient’s considerations are unrelated to the medical concerns and his chances of recovery.



Cases in which there is no justification for coercion will be discussed in detail next week. However, we should note that even where coercion is justified, in-depth and responsible judgment is required on the part of the doctors, and this decision should not be made lightly. They should try to understand the patient's considerations and take them into account as much as possible. This is clearly stated by Rav Moshe Feinstein zt"l (*Igros Moshe, C.M. 2:73*):

*Regarding a patient who doesn't consent to treatment – it depends if it is due to despair or to suffering – as he only considers the short term in which he doesn't want to suffer, though he believes the physicians who say that the treatment will be beneficial to him, either in the sense that it will cure him, or give them an indication how to treat him. This is an act of foolishness and childishness and, if they are able, they should compel him. But if it is due to the fact that he doesn't trust the physicians - **they need to find a physician whom he trusts**. But if there is no physician like that, and, due to the patient's condition, we cannot wait until he realizes that the treatment is for his benefit nor send him to a different facility with different physicians in another town, the physicians in this hospital have no choice but to coerce him. [However, this is on condition that] all of the physicians in this facility believe that this is the correct treatment for him and that he must not be terrified of it. But if he will be terrified by the treatment – even due to foolishness – they should not coerce him because the fright may harm him, or even cause his death, and they will be considered to have directly killed him. Therefore, it is preferable not to coerce him, even if his relatives want him to be coerced. **When physicians have a patient who does not consent to treatment, they need to consider the matter very carefully, as it is likely that coercing him will not be beneficial. They should make sure to act for the sake of Heaven.***