

The 2025 Dr. Martin Avi Hurwitz z"l Memorial Shiur:

Refuah: Chessed, Chiyuv, or Career

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With Hashem's helps, in just a few short months, I plan to begin my transition from Yeshiva student to medical student. As such, it seemed appropriate for me to research how exactly the Torah views healing both as a stand-alone act, and as a profession.

The Torah in Parshas Mishpatim, when describing the financial obligations that one has after damaging his fellow, states:

אם יקום והתהלך בחוץ על משענתו ונקה המכה רק שבתו יתן ורפא ירפא

If he arises and walks outside on his cane, the assaulter shall be acquitted, he shall only pay for loss of work and he shall heal him.

This seems to be an explicit endorsement of physicians, to the extent that one who damages his friend must pay for the services of a doctor. However, the Ibn Ezra in his commentary on this *pasuk* creates an important distinction. He explains that the Torah is only endorsing, and by extension allowing, the physician to treat external damages, however, illness that is caused by Hashem directly and is not the result of an altercation with one's fellow, is not included in this *pasuk*. He then concedes that our sages have a different interpretation but seems to leave off indicating that our tradition is not the simplest reading of the *pasuk*. Is there a specific passage that he is referring to that indicates a different approach?

The Gemara in Bava Kama (85a) quotes that Rabbi Yishmael extrapolated from the doubled usage of the verb to heal, "*verapo yerapei*", that we see the Torah grants license to the doctor to heal. Both Rashi and Tosafos (although in slightly different ways) highlight that there is a tension between healing and meddling in Hashem's affairs, necessitating explicit permission to heal. Similarly, the Ramban, in *Toras Haadam*¹ in his second interpretation of this Gemara explains along these lines. The Ramban's first suggestion explains that there is an emphasis on healing so that the prospective physician doesn't hesitate despite knowing that he risks damaging the patient.

While this Gemara does seem to contradict the Ibn Ezra's interpretation, this may be a much older debate. The Gemara in Berachos (60a) records that Rav Acha instructed one who was approaching a bloodletting procedure to pray. Specifically, he ought to include in this prayer an acknowledgement that this is not a natural healing, rather all healing comes from Hashem, but he is engaging in this behavior since this is customary amongst people. Abbaye disputes this formulation based on the above quotation from Rabbi Yishmael. How would Rav Acha respond? Possibly, he thought along the lines of the Ibn Ezra, that this specific dispensation is limited to external or manmade wounds. If so, why is the Ibn Ezra so confident that there is indeed an accepted tradition that contradicts his own interpretation?

There is an alternative Gemara that the Ibn Ezra may have been referring to. In Sanhedrin (73a) we are taught:

¹ *Shaar Hameichush, Inyan Hasakana.*

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 who sees his friend drowning in a river, being mauled by animals, or being approached by bandits that he is obligated to save him? It is taught "do not stand [idly] by your friend's blood". Is this derived from here, but it has already been derived from there – "how do we know to include [in the obligation of returning lost objects] his own body? It is taught 'and you shall return it/him to him'"? Had it been [solely] derived from there I would have thought that this is for himself, but to expend effort and hire others I would have thought not, therefore it is taught here.

The Gemara seems unambiguous that there is a *mitzva* for one to save his friend from physical harm. This begs another question. If this is the source for the obligation to heal others, what is the necessity for the granting of permission to heal in Parshas Mishpatim? Tosafos HaRosh commenting on Brachos (60a) proposes two explanations. The first is quoted from the Ri MiOrleans that the permission granted to the physician is not merely to treat illness, it is permission to receive financial compensation for doing so. His second explanation is that even within the Gemara in Sanhedrin we could have thought to distinguish between treating natural illness and treating something caused by man.

If the source of the obligation to heal is from *hashavas aveida*, from returning lost items, why would we have thought to distinguish based on the cause for this potential loss (i.e., whether it is caused by man or not)? Additionally, why does the Gemara in Bava Kama phrase it as "permission" and not as an obligation? According to the Ramban's first proposed explanation of this Gemara in Bava Kama, that the emphasis is to preempt any hesitation due to fear that one may cause harm, this is not a relevant question; however, according to Rashi, Tosafos, and the Rosh, this is. Finally, while the Gemara explains the necessity to source the obligation to save another Jew in the prohibition of "lo sa'amod", not to stand by one's friend's blood, the Gemara doesn't explain what *hashavas aveida* adds.

The Mishna in Nedarim (38b) discusses one who is prohibited from causing benefit to his fellow, and the ramifications that may have on the obligation to heal. The Mishna states, and the Gemara comments upon this Mishna:

ומרפאו רפואת נפש אבל לא רפואת ממון.

היכי קתני אילימא דרפואת נפש בחנם רפואת ממון בשכר ליתני הכי מרפאו בחנם אבל לא בשכר אלא רפואת נפש גופו רפואת ממון בהמתו.

One may heal him a personal healing, but not a monetary healing.

In what case was this taught? If one will suggest that "personal healing" is healing for free, and "monetary healing" is for pay, it should rather state: One may heal him for free but not for pay. Rather, "personal healing" is his body, while "monetary healing" is his animal.

Many of the commentators² explain that the reason one may treat his physical ailments, despite the prohibition against benefiting the patient, is due to the *mitzva* of *hashavas aveida*. If so, why is there a distinction between treating the patient and treating his property since both are generally included in the obligation to return lost property?

The answer may lie in the connection that the Gemara draws between the prohibition of *lo sa'amod* and the obligation of *hashavas aveida*. When we are taught that the former adds an additional element of effort and cost on top of the obligation that stems from the latter, the Gemara assumes that this level of effort can only be gleaned from the former obligation, why? In truth, it is very logical that an obligation primarily taught in the context of saving lives would have wider parameters than that regarding lost property. Furthermore, we know of limitations that exist in the *mitzva* of *hashavas aveida* that do not exist elsewhere³. From the above sources it is seen that while the *mitzva* that one is performing is categorized as *hashavas aveida*, the parameters of that *mitzva* are defined by *lo sa'amod*.

With this, returning to the distinction between human illness, and treating property, the Ran⁴ in his commentary cites the Talmud Yerushalmi explaining that “not from everyone is one merited to be healed”. While this logic may be enough to trigger the expanded obligation created by *lo sa'amod* (even if that obligation is an offshoot of *hashavas aveida*), it may not be enough to do the same for a typical case of *hashavas aveida*. This same idea may explain why we need specific permission to treat illness that is an act of God. Had the source been from *hashavas aveida* alone, there would be no reason to distinguish between types of illness, but now that it is defined by *lo sa'amod*, it would have been possibly and possibly logical to limit the *mitzva* to cases where one does not seem to be meddling in God’s plan. Therefore, there must be an additional source granting permission to do so; once the permission has been granted, there need not be a mandate, as one is already mandated by the aforementioned *mitzvos*.

Having established that there is a *mitzva* to heal, and defined what that *mitzva* is, are there ramifications for a professional physician?

The Gemara in Maseches Bechoros (29a) prohibits taking money for performing certain *mitzvos* with the following extrapolation:

הנוטל שכרו לדון דיניו בטילים להעיד עדותיו בטילין להזות ולקדש מימיו מי מערה אפרו אפר
מקלה אם היה כהן מטמאהו מתרומתו מאכילו ומשקו וסכו ואם היה זקן מרכיבו על החמור ונותן
לו שכרו כפועל.

מנהני מילי אמר רב יהודה אמר רב דאמר קרא ראה למדתי אתכם וגו' מה אני בחנם אף אתם
בחנם.

One who takes money to judge, his judgements are rendered void; to testify, his testimony is rendered void; to throw or sanctify [the Para Aduma ash] his water is [like] cave water and his ash is [like mundane] burnt ash. If he is a Kohen, he may be

² See specifically Rambam in his commentary to the *Mishna*, and the Ran in his commentary on the *Gemara* (41b).

³ See *Bava Metzi'a* (30a).

⁴ Ibid.

rendered impure from his terumah, [although in such a case] one is obligated to provide food, drink, and oil to anoint. If he is elderly, one is obligated to provide a donkey to ride upon. He is paid as a worker who was absent from his work.

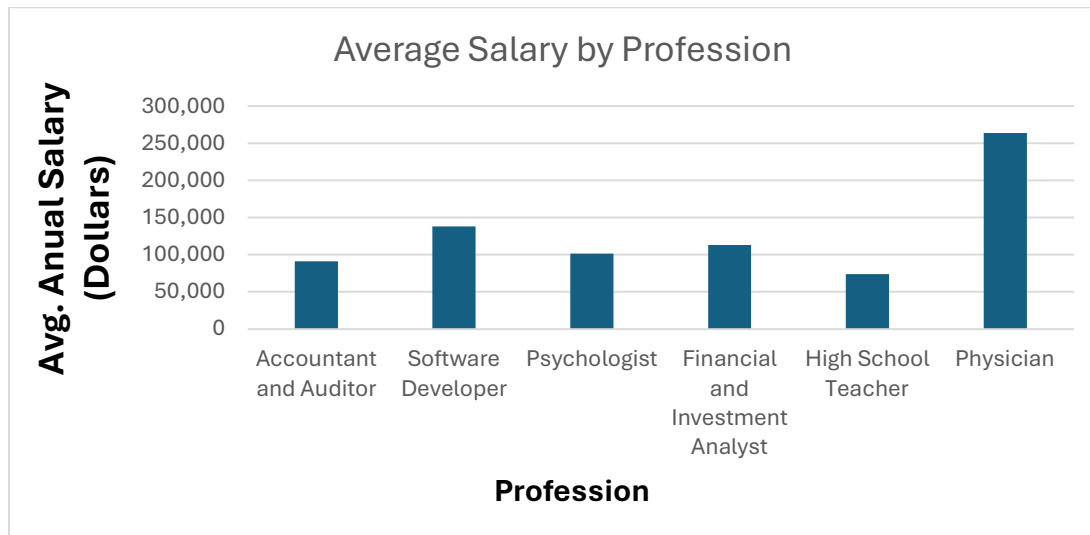
From where is this derived? Rav Yehuda said in the name of Rav, it is taught in the verse “see I have taught to you” etc., just as I [taught] freely, so too you shall [teach] freely.

While one may have understood this to be limited to the cases explicated in the Gemara along with the source of this prohibition – teaching Torah, many commentators assume that this is a more extensive prohibition, and the Ramban⁵ explicitly mentions healing as an example of a *mitzva* that is subject to this prohibition. This is codified in Rabbi Yosef Cairo’s Shulchan Aruch⁶ as a prohibition for a doctor to demand monetary compensation, even if, had it been agreed upon beforehand, he would be legally entitled to it.

If so, is there a justification for the common practice of Jewish doctors to demand payment from their patients?

The Shulchan Aruch allows for payment of *s’char batala*, payment for work that one otherwise could have performed. Rabbi Herschel Schachter Shlit”a explained that this is calculated by determining the amount of money one would agree to receive in order to not work a regular job. It would seem that the payment a physician receives is excessive in comparison to this standard. It is hard to imagine that one would not be willing to receive the salary of an accountant to not work, yet as is seen in Figure 1. below, a physician is paid well beyond that amount.

Figure 1⁷. Graph depicting the average annual salary in dollars of various professions as recorded by the U.S. Bureau of Labor Statistics.



⁵ Ibid.

⁶ *Yoreh De'ah* 336.

⁷ “May 2023 National Occupational Employment and Wage Estimates.” *U.S. Bureau of Labor Statistics*, U.S. Bureau of Labor Statistics, 3 Apr. 2024, www.bls.gov/oes/2023/may/oes_nat.htm#13-0000.

Is there a legal justification to demand payment in excess of *s'char balata*? Alternatively, is it possible to explain that this is indeed only *s'char balata*?

The simplest explanation is that of Tosafos HaRosh in the name of the Ri MiOrleans quoted above. He explained that the *pasuk* in Parshas Mishpatim is specifically granting license to physicians to charge for their services; if so, the general restriction regarding taking money for *mitzvos* is not applicable in this case. However, it is clear that the *halacha* is not in accordance with this opinion, as the Shulchan Aruch and the various commentators do not even make reference to this opinion.

It is possible to suggest an explanation based on the Yad Avraham's comment on the Shulchan Aruch cited above. The Yad Avraham states that we generally do not hold someone liable for loss of life when the action that led to loss of life was a *mitzva*⁸. For example, if an agent of the court was administering lashes, or a teacher was disciplining a student and it resulted in death, we do not rule that the agent or teacher are exiled (as is the normal punishment for accidental murder). If so, why does the Shulchan Aruch rule that if patient is killed as a result of treatment, the physician is exiled? The Yad Avraham posits that there is a fundamental difference between these cases. In the example of the teacher or agent of *beis din*, the *mitzva* that they were performing was the action that caused death, while the physician's *mitzva* is not the act of treating the patient, but the result of the patient being healed. Therefore, when the patient dies, no *mitzva* has been performed and there is no exemption from exile. If, as explained above, the source of the *mitzva* is *hashavas aveida*, why do we not consider the action a *mitzva*, and instead limit it to the result? In truth, there is a dispute amongst the Rishonim as to when the *mitzva* of *hashavas aveida* generally begins⁹, but must we assume that the Yad Avraham is choosing sides in this debate? If the hypothesis presented above, that the *mitzva* is *hashavas aveida* but the parameters are defined by *lo sa'amod*, is correct, it is easier to understand why this particular manifestation of the *mitzva* is result oriented, even if the standard *mitzva* of *hashavas aveida* is not.

If the Yad Avraham is accepted, there would seem to be no issue with taking payment for treating a patient since the payment is for the action of treatment, while the *mitzva* is the result of that action (and since one generally does not charge more for a successful treatment in comparison to a failed treatment, it is clear that the payment is for the action and not the result). However, Rabbi Lamm¹⁰ argues that this idea is actually a dispute between the Rambam (who would agree with the Yad Avraham) and Ramban, and since the Shulchan Aruch sides with the Ramban, we cannot accept this opinion of the Yad Avraham. Additionally, if the brunt of the proof to this idea is that the Shulchan Aruch rules a physician is subject to exile, there are other valid explanations as to why this may be¹¹.

The Imrei Baruch in his comments on the Shulchan Aruch asks, given that the prohibition to take money for healing is limited to healing Jews, if a non-Jew were to offer a physician much more money to treat him, does the calculation for *s'char batata* change, thus allowing the physician to

⁸ See Makkos (8a).

⁹ The Nimukei Yosef (Bava Metzia 16a – using the traditional pagination of the Rif) quotes two opinions, either at the time that one sees the lost item, or when one finally returns it.

¹⁰ Sefer Halachos V'Halichos Chapter 22.

¹¹ Specifically, see Aruch HaShulchan (Y"D 336:2).

charge the Jew more? Rav Shlomo Zalman Auerbach is quoted in the Nishmas Avraham¹² as defining the amount that one could have received from a non-Jew as *s'char batala*. If so, this would justify a Jewish physician charging patients the standard fare. There are two potential arguments against this approach. Rav Moshe Feinstein¹³ argues that it is generally not true that because one treated the non-Jew, he was therefore unable to treat the Jew. If so, one cannot consider this to be *s'char batala* since he did not lose money he could have otherwise gained as he still had the wherewithal to accomplish both tasks. Rav Schachter argued that even if the Imrei Baruch is correct that the calculation for *s'char batala* changes, it is hard to accept that it rises to the full amount that the non-Jew would pay. This is because Rav Schachter defines *s'char batala* as the amount a person would be willing to accept to avoid working, which almost by definition is less than he would be paid for the work that he now must do.

A second possibility that is quoted in the contemporary halachik literature, is based on the Rosh's comments on the Mishna in Bechoros. The Rosh asks that we find record of judges who took payment; why is that not expressly forbidden by this Mishna? He explains that if one's entire livelihood is through a *mitzva* profession, one is not limited to *s'char batala* since "it is unthinkable that they die of starvation and therefore they needed to receive the amount needed to support them". This ruling is also quoted by the Shulchan Aruch with regards to those teaching Torah, who should theoretically also be bound by *s'char batala*, but have the above dispensation. However, based on the Rosh alone, it would seem that while a physician is allowed to exceed *s'char batala* in order to make ends meet, there would be no exception to go beyond that. Rabbi Feinstein takes the Rosh one step further and says¹⁴ "and it is also permissible to enrich himself through this profession specifically". He does not explain if this is his interpretation of the Rosh, or there is an additional source indicating this.

A third exemption to the restriction of *s'char batala* can be found in the Tosafos Yom Tov¹⁵ based on an idea mentioned in the Teshuvos HaRashba (3:11) that one is not limited to *s'char batala* before he is obligated to perform the *mitzva*. For example, while one who knows testimony that can benefit his fellow is obligated to testify, and therefore is not allowed to take payment for it, one may stipulate that he is only doing so on condition that he receives payment before witnessing the original act (since he is not obligated to bear witness, only to testify once he has already done so). By extension, there is no obligation to make oneself available to see patients, only to treat those in front of him, therefore, one may demand financial compensation for doing so. Rabbi Schachter rejected this explanation regarding doctors as he is of the opinion that such a stipulation must be made in front of a *beis din*, which is not the common practice. Rabbi Feinstein¹⁶ argues two points that he believes renders Rabbi Schachter's argument untrue. He argues that A) most Jews prefer to have Jewish doctors, and that B) Jewish doctors are only willing to spend the time, effort, and money to attend medical school if they would then be permitted to charge full price for their services. Therefore, he believes that it is as if this agreement was made between the patients and

¹² Y"D 336:11.

¹³ Igros Moshe Y"D 4:52.

¹⁴ Ibid.

¹⁵ Bechoros 4:6 and in his commentary to the above Rosh, Divrei Chamudos.

¹⁶ Ibid.

the physicians, and since this stipulation is not needed to be explicated, this may remove the requirement for it to happen in court.

For those doctors that work for a hospital or larger clinic, i.e., those who are not self-employed, there would seem to be one final exemption. The Bach¹⁷ in his commentary to the Tur¹⁸ explains that there is no need to limit oneself to *s'char batala* when one is being paid by a communal fund rather than taking payment from those for whom he is performing the *mitzva*. The Bach records that this was indeed the practice in his community. Based on this, if a physician is paid a set annual salary, thus not taking direct payment from the patient, perhaps there would be no restriction on the salary he is paid. This would certainly seem to be the case if the patient himself is not paying, rather an insurance company is, as then the physician is both receiving payment from his employer thus not taking direct payment from the patient, and the patient is not the one paying, rather it is a communal fund that is paying.

To summarize, amongst the contemporary decisors quoted above, there seem to be three opinions regarding a doctor's ability to receive payment. Rabbi Schachter is the most stringent, limiting a doctor to *s'char batala*¹⁹. Rabbi Auerbach would allow for full payment, provided one has reasonable opportunity to treat non-Jews instead. Rabbi Feinstein would seem to allow accepting full payment either because this is one's primary means of income, or because there is an unspoken agreement between patients and their doctors.

Dr. Martin Avi Hurwitz was born December 13, 1938 to Allen and Regina Hurwitz in Syracuse, New York. Despite not having a formal Yeshiva education, he had the opportunity to study Torah with local Rabbis and teachers, graduated as valedictorian in high school and attended Syracuse University. He graduated with high honors from Albert Einstein College of Medicine in 1963. Dr. Hurwitz maintained a private psychiatric practice in the Upper East Side of Manhattan. His patients appreciated his tremendous dedication, time, and expert care that he gave them. Many traveled from various parts of the tri-state area for his expertise. He often helped with ethical issues as well as medical care. He is sorely missed by his loving family and patients. This lectureship is sponsored by his brother Dr. David Hurwitz (YU '72, AECOM '75), sister-in-law Barbara and extended family.

¹⁷ I am extraordinarily grateful to my Rebbe, Rabbi Yaakov Werblowsky for both his general help in clarifying the ideas presented in this article, as well as for specifically pointing me towards this Bach.

¹⁸ Choshen Mishpat 9.

¹⁹ Although perhaps he would agree to the exception of one who is not self-employed.