

# Against Medical Advice

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## Permission to Heal

According to the Talmudic Sages, permission to heal the sick is implicit in Exodus 21:18-19:

וכי-יריבן אנשים והכה-איש את-רעהו באבן או באגרף ולא ימות  
ונפל למשכב, אם-יקום והתהלך בחוץ על-משענתו ונקה המכה רק שבתו  
יתן ורפא ירפא.

When men quarrel and one strikes the other with a stone or with his fist and the man does not die but becomes bedridden, then if the man rises again and walks abroad with his staff, he that struck him shall be clear; he shall pay only for the loss of his time, and shall have him thoroughly healed.

These verses require anyone who strikes another to cause the victim to be healed. It follows that the Torah permits medical practice.<sup>1</sup>

Among the commentators on this passage, Rashi and the Tosafot are of particular importance.

Rashi<sup>2</sup> explained the need for such permission in the Torah. Had the Torah been silent, we might have thought it improper to heal a person whom God has caused to be ill. Although all illness ultimately derives from God, the Torah makes clear that it is His will that we alleviate suffering.

The Tosafot<sup>3</sup> observed that the Torah's permission to heal applies equally in cases of disease and in cases of injury inflicted by a fellow man.

## Rav Abraham Isaac Kook

Rav Kook<sup>4</sup> had a novel approach to the question of the Torah's

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1. Tractate *Berachot* 60a; *Bava Kama* 85a.

2. *Ibid.*

3. s.v. שנייתנה.

4. Lithuania/Israel, 1865-1935.

permitting physicians to heal:<sup>5</sup>

פשטות של דברי חז"ל "ורפא ירפא מכאן שנתנה תורה רשות לרופא לרפאות", מורה כן שעיקר הרפואה מצד חכמתה מסופקת היא, שאם היה דבר ברור, איך יעלה על הדעת שלא יהיה מחוייב לרפאות וכי אין עובר על לא תעמוד על דם רעך על כל צרה שבאה עליו אפילו מן השמים... אלא שעיקר היסוד מפני שכל עיקרי הרפואה אינם מבוררים כ"כ ואין ידוע בבירור אם אין הנחותיהם מסופקות. ע"כ הוצרך לנתינת רשות, שמ"מ אין דרך אחרת לפני בני"א.

When the Talmudic Sages inferred on the basis of the verses in Exodus 21 that physicians are permitted to heal, they clearly meant that although there is some doubt regarding the theory of medicine, healing is still to be permitted. For if it were clear [beyond a doubt that the theory of medicine is correct], how could one imagine that healing would not be obligatory? Does one not violate the verse "You shall not stand forth against the life of your neighbor"<sup>6</sup> even when one's neighbor's misfortune is caused by Heaven...? However, the principle here is that the principles of medicine have not been so clearly proven and it is unknown whether their assumptions are to be doubted. Therefore the Torah had to permit healing for there is no other way open to man.

In this passage Rav Kook suspected the foundations of medicine. Since every medical theory must be viewed with distrust, it is unclear whether any medical theory should be applied in lifesaving. Perhaps, one might think, the biblical law which prohibits standing idly by when one's neighbor is in danger requires us to take only measures of undoubted value.

In Rav Kook's view we must always consider the possibility that medical theory is wrong and that any attempted treatment will be ineffective or even injurious. Since the value of any specific medical practice is doubtful, the question naturally arises whether it is permitted to practice medicine at all. To this the Talmudic Sages responded by deriving a clear permission to heal from the verses in Exodus 21. The Torah permits medical treatment although the very foundations of that treatment are in doubt.

5. *Da'at Cohen* 140, p. 260b.

6. Leviticus 19:16.

### The Obligation to Heal and to Be Healed

According to Rambam in his *Commentary on the Mishna*,<sup>7</sup> healing is not only permitted; it is obligatory:

לאזם לאלטביב שריעה אן יטב אלמריץ' מן ישראל, וד'לך דאכ'ל  
תחת קולהם פי שרר קול אלכתאב "והשבתו לו" לרבות את גופו, לאנה  
אד'א ראה תאלף עלי כ'לאצה יכ'לצה בג'סדה או במאלה או בעלמה.

The Law requires the physician to heal Jews. This is part of what they said [in the Talmud] when they explained that the verse "you shall surely restore it to him"<sup>8</sup> includes the obligation to heal the sick. For if you see someone being harmed and you can save him, you are to save him with your body, with your property, or with your knowledge.

In Rambam's view physicians are obligated to use their knowledge, their skill, and their property to provide medical care. Just as the verse "you shall surely restore it to him" obligates us to restore lost property, so it obligates the physician to restore lost health.

This principle obligates the physician to engage in healing. However, it does not require the patient to seek medical treatment; neither does it require the patient to follow the physician's advice.

Rambam clearly formulated the physician's obligation to heal in this passage in his *Commentary on the Mishna*. However, when he later wrote the *Mishneh Torah*, his code of Jewish law, he did not mention any such obligation. There are two possible approaches to Rambam's silence in the *Mishneh Torah*. Perhaps he changed his mind and no longer held that the physician is obligated to heal. Or perhaps the physician's obligation is included in some other principle.

Rabbi Baruch Epstein<sup>9</sup> explained Rambam's silence in the *Mishneh Torah* very simply. The verses in Exodus which we quoted above imply only permission to heal, not a commandment to heal. According to Rambam the biblical source requiring the healer to treat a patient is in Deuteronomy 22:1-2:

לא-תראה את שור-אחיק או את-שיו נדחים והתעלמת מהם השב  
תשיבם לאחיק. ואם-לא קרוב אחיק אליך ולא ידעתו ואספתו אל-תוך  
ביתך והיה עמך עד דרש אחיק אתו והשבתו לו.

7. *Nedarim* 4:4.

8. Deuteronomy 22.

9. Lithuania, 1860-1942; see his *Torah Temimah*, Exodus 21:145.

You shall not see your brother's ox or his sheep go astray and hide yourself [i.e., withhold your help] from them; you shall take them back to your brother. And if he is not near you, or if you do not know him, you shall bring it home to your house, and it shall be with you until your brother seeks it; then you shall restore it to him.

In the Talmud it is written that these verses also require saving an endangered life.<sup>10</sup> If we must save lost property, surely we must also save life.

Since Rambam did codify this biblical law of lifesaving in *Hilchot Rotseach* 1:14, Rabbi Epstein reasoned that "it is obvious that when one is sick there is a commandment to heal him." If we must restore lost property, surely we must restore lost health.

Like Rambam, neither *Rif* nor *Rosh* mentioned in their codes of Jewish law any specific obligation of the physician to heal. Since they did codify the general principle of lifesaving, Rabbi Baruch Epstein's approach could apply to them as well.

In short, the physician's obligation to heal can be viewed as part of the general obligation of lifesaving, which in turn is derived from the obligation to restore lost property. It follows that there is no need to single out physicians and obligate them to heal as their obligation is a logical consequence of the general principle requiring the return of lost property.

### Rashba

Like Rambam, Rashba<sup>11</sup> held that medical practice is obligatory. However, Rashba's approach to the matter is different, leading to different conclusions. In a historic responsum<sup>12</sup> he dealt at length with the value of rational, secular knowledge in general and medicine in particular. After justifying the practice of medicine on the basis of a number of biblical and rabbinic sources, he added:

אסור להכנס בעניני הסכנות ולהבטיח על הנס והוא אמרם שקיר  
נטוי מזכיר עון. ואמרו: כל הסומך על הנס אין עושין לו נס. ומותר  
לבטוח באדם, והוא שלא יסור לבו מן השם... וזה כולל כל עסקי בני  
האדם במלאכתם זולתי האנשים השלמים ושזכיותיהם מרובות כמעשה  
דברי חנינא בן דוסא עם הערוד, שאמרו: אוי לו לאדם שפגע בו ערוד,

10. Tractate *Sanhedrin* 73a.

11. Spain, 1235-1310.

12. 1:413.

ואוי לו לערוד שפגע בו רבי חנינא בן דוסא... ואפילו חסיד שבחסידיים אין להם רשות לעשות במלאכתן דרך הבטחון רק כדרכו של עולם, שלא יאמר: אדליק נרי במים או ביין ואסמוך על הנס.

It is prohibited to endanger oneself by relying on a miracle, as they said: A leaning wall reminds you of your sins.<sup>13</sup> Further they said: Anyone who relies on a miracle will not be granted a miracle.<sup>14</sup> It is permitted to rely on man as long as the Lord remains in your heart... This principle pertains to every manner of human endeavor with the exception of perfect men of great merit as in the story of Rabbi Chanina ben Dosa and the wild animal, as they said: Woe to the man who encounters a wild animal, and woe to the wild animal which encounters Rabbi Chanina ben Dosa...<sup>15</sup> Even the most pious may not rely [on God] in the course of their endeavors unless [they act] in accord with the laws of nature. Thus they may not say, “I shall fill my candle with water or wine,” and rely on a miracle to ignite it.

Rashba’s position is based on an important principle. After having established in an earlier passage that the practice of medicine is permitted, he concluded that the sick must apply the rules of nature to try to cure themselves. The reason the sick are prohibited from refraining from therapy is simple: Except for perfect men of great merit like Rabbi Chanina ben Dosa, no one is allowed to rely on a miracle. Instead everyone must act in accord with the laws of nature. This is true even if God intended the patient’s illness to cause him or her to repent, as they said in the Talmud: If your walls are dangerously leaning, remember your sins!

According to Rashba the patient is obligated to accept treatment. In this he goes beyond the obligation formulated by Rambam in his *Commentary on the Mishna* where he only demonstrated the obligation of the physician to engage in healing.

### **Rabbi Chayyim Yosef David Azulai (*Chida*)**

In the eighteenth century Rabbi Chayyim Yosef David Azulai of Hebron (known by the acronym “*Chida*”) supported the

13. Tractate *Berachot* 55a.

14. Cf. tractate *Taanit* 20b.

15. Tractate *Berachot* 37a.

approach of Rashba despite certain opinions among the earlier authorities to the contrary. Rabbi Azulai added a new formulation to support the patient's obligation to accept medical treatment:<sup>16</sup>

ונראה דהאידינא אין לסמוך (על) הנס, וחייב החולה להתנהג בדרך העולם לקרות רופא שירפאנו. ולא כל כמיניה לשנות סוגיין דעלמא ולומר כי הוא גדול מכמה חסידי הדורות שנתרפאו על ידי רופאים. וכמעט איסור יש בדבר, אי משום יוהרא ואי משום לסמוך אניסא במקום סכנה ולהזכיר עונותיו בשעת חוליו. אמנם ינהוג כדרך של בני אדם ואורח כל ארעא להתרפאות על ידי רופא ולבו בל עמו. רק ידבק בקונו למתקף ברחמי בכל לב. ובו יבטח דוקא.

It seems that nowadays one should not rely on miracles. Instead the sick are obligated to behave in accord with the ways of the world and call a physician to heal them. They cannot deviate from common practice and say that they are greater than the most pious men of the generation who have been healed by physicians. This is almost prohibited, either because it would be prideful or because it is prohibited to rely on miracles when one is in danger, thereby recalling one's sins while sick. Indeed, you should act like everyone else; it is the common practice to accept healing by physicians without accepting it in one's heart. Rather you should cling to the Creator to strengthen His mercy with all your heart. Trust only in Him!

There is an enigmatic element in this passage. Chida seems to encourage medical treatment while instructing the patient to reject the value of that therapy and trust only in God.

The acceptance of medical therapy is based on two ideas. First, he reaffirmed the position of Rashba that it is improper to rely on miracles. Second, he wrote that refusal of medical treatment would be prideful.

Although the formulation of this second reason is innovative, it is closely related to Rashba's reasoning. Patients who refuse treatment in the belief that God will miraculously heal them place themselves in the congregation of the most pious who are worthy of such miracles. This is prideful and therefore wrong. It is better to have a more modest view of oneself and not depend on being worthy of miracles.

16. *Birchei Yosef, Yoreh De'ah* 336:2

Rashba indirectly referred to the problem of pridefulness when he quoted the Talmudic expression that a leaning wall should remind you of your sins. Rashba indirectly referred to the concept of humility; Chida explicitly formulated it.

When Chida instructed the patient to reject the value of medical therapy in his heart, he meant that the patient is to believe that God is the source of healing. There are two ways in which He can heal: either through miracles or through the agency of medical therapy. Since it is wrong to rely on miracles, it follows that the patient should accept treatment while believing that God is the true source of healing.

There is one other element in this passage which deserves careful attention. Chida did not actually prohibit relying on miracles as did Rashba. Instead he wrote that such reliance is “almost prohibited.” There is some distance between “prohibited” and “almost prohibited.”

Although Chida in principle agreed with Rashba that reliance on miracles is wrong, he acknowledged that such reliance has some legitimacy and is therefore not altogether prohibited. In short, Chida favored Rashba’s position but did not absolutely prohibit the refusal of medical treatment.

Chida seems to have based his opinion on a historical development. In earlier generations, when there were more pious people who merited miracles, the position rejecting medical intervention had its place. But “nowadays,” when such miracles are rare, it would be prideful for any individual to rely on miraculous intervention.

## Ramban

In discussing Chida’s position we observed that he supported the approach of Rashba in opposition to other authorities who held that there is no obligation of medical therapy. Most specifically Chida rejected the opinion of Ramban.<sup>17</sup> Like Rambam, Ramban was a physician.<sup>18</sup> He wrote about medical treatment in two pass-

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17. Spain/Israel, 1194-1270.

18. See *Resp. Rashba* 1:120, 1:413, and 1:825, where Ramban is described by his disciple as having treated a gentile woman in childbirth. Rabbenu Yona was reportedly unhappy that Ramban treated infertility in a gentile woman (see Rabbi Yosef Karo in *Bedek ha-Bayit Y.D.* 154:2). In *Resp. Rashba* 1:167 Ramban is described as treating a patient for a condition like sciatica or lumbago (חולי מתניים) without reference to the patient’s religion. Ramban prepared a manuscript of

ages. First, in his *Commentary on the Torah* he wrote:<sup>19</sup>

והכלל כי בהיות ישראל שלמים והם רבים לא יתנהג עניינם בטבע כלל לא בגופם ולא בארצם, לא בכללם ולא ביחיד מהם, כי יברך השם לחמם ומימם ויסיר מחלה מקרבם עד שלא יצטרכו לרופא ולא להשתמר בדרך מדרכי הרפואות כלל, כמו שאמר כי אני ה' רופאך. וכן היו הצדיקים עושים בזמן הנבואה גם כי יקראם עוון שיחלו, לא ידרשו ברופאים רק בנביאים... ומה חלק לרופאים בבית עושי רצון השם אחר שהבטיח "וברך את לחמך ואת מימך והסירותי מחלה מקרבך"? והרופאים אין מעשיהם רק על המאכל והמשקה להזהיר ממנו ולצוות עליו... אלו לא היה דרכם ברפואות יחלה האדם כפי אשר יהיה עליו עונש חטאו, ויתרפא ברצון ה', אבל הם נהגו ברפואות והשם הניחם למקרה הטבעים.

וזה היא כוונתם באמרם "ורפא ירפא, מכאן שניתנה רשות לרופא לרפאות", לא אמרו שנתנה רשות לחולה להתרפאות, אלא כיון שחלה ובא להתרפאות כי נהג ברפואות והוא לא היה מעדת השם שחלקם בחיים, אין לרופא לאסור עצמו ברפואות לא מפני חשש שמא ימות בידו אחרי שהוא בקי במלאכה ההיא ולא בעבור שיאמר כי השם לבדו הוא רופא כל בשר שכבר נהגו ועל כן האנשים הנצים שהכו זה את זה באבן או באגרוף יש על המכה תשלומי הרפואה כי התורה לא תסמוך דיניה על הנסים...

The rule is that when the Jewish people are perfect and numerous their affairs are not conducted in accord with the laws of nature at all. This is so for their individual persons as well as for their land, and for their whole aggregate and as well as for each one of them because the Lord blesses their bread and their water and removes all illness from their midst so they have no need of physicians and no need to protect themselves by any medical prophylaxis as is written: I am the Lord, your healer.<sup>20</sup> And thus the righteous men would do in the times of prophecy if they would occasionally sin and fall sick. They would not seek out physicians [to heal them]. Rather [they sought out] prophets...

What place have physicians in the household of those who do the will of God since He promised that "He will

prescriptions for various ailments (see H.D. Chevel, *Ramban*, p. 36). For further data, see D. Margalit, *Chachmei Yisrael ke-Rofeim*, pp. 128-135.

19. Leviticus 26:11.

20. Exodus 15:26.



bless your bread and your water, and take away sickness from the midst of you”?<sup>21</sup> Medical practice pertains to food and drink, prohibiting some and commanding others... When those who reject the way of medicine fall sick as punishment for their sins, they are healed by the will of the Lord. But those who followed the way of medicine – the Lord left them to the accidents of nature.

This is what they meant when they said:<sup>22</sup> The verse “have him thoroughly healed”<sup>23</sup> implies that the Torah permits the physician to heal. Note that they did not say that the Torah permits the patient to be healed. However, whenever a patient has fallen sick and has come to be healed, since he follows the way of medicine and is not a part of the congregation of the Lord whose lot is life, the physician ought not be prohibited from providing treatment. The physician need not fear that the patient might die by his hand because he is proficient in his work. Neither [need the physician avoid healing] so that it will be said that only the Lord is the healer of all flesh since it [medical treatment] has become the common practice. Therefore when men quarrel and one strikes the other with a stone or with his fist, he that struck him shall pay for the medical expenses.<sup>24</sup> This is because the Torah does not rely on miracles...

According to Ramban, the Lord watches over the Jewish people and heals their ills as long as they obey His commandments. In the days of the prophecy, the sick would turn to the prophets for religious instruction to bring them close to God, who would heal them. Within the ideal framework of complete devotion to God there is therefore no need for medical intervention to effect a cure. Instead, Torah and fulfillment of its commandments will lead to divine intervention curing the sick.

On the other hand, those who were imperfect in their devotion to God and fell ill as punishment for their sins occasionally failed to turn to the prophets for instruction in returning to the ways of the Lord. These sinners, who followed the advice of physicians instead

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21. Exodus 23:25.

22. *Bava Kama* 85a.

23. Exodus 21:19.

24. Exodus 21:18-19.

of the prophets, did not merit divine intervention. Therefore they could only hope for a medical cure in accord with the laws of nature.

In Ramban's view a medical cure is never the best option for the patient. Instead the sick should endeavor to come closer to God so that they will merit His miraculous intervention. This is why the Talmud never said that it is permissible to accept medical treatment. If read carefully, the Talmud's leniency regarding medical treatment pertains only to the physician. In the words of the Talmud: "the Torah permits medical practice."<sup>25</sup> In short, physicians are permitted to treat the sick even though it is fundamentally wrong for the sick to seek medical treatment.

Ramban was aware that this position posed two problems, one exegetical and one ethical. First, if providing medical treatment was never prohibited, why did the Torah need to give the physician permission to treat patients? What was the putative problem which the Sages were resolving when they formulated the permission to provide medical treatment?

The second problem is an ethical dilemma. On the one hand, it is improper to accept medical treatment. On the other, the Torah permits the physician to provide medical treatment. How can medical treatment be at once improper for the patient and correct for the physician? If it is wrong, surely the physician should have no part in it. If it is correct, why should the patient not freely benefit from it?

Ramban responded to the first problem by writing that "the physician need not fear that the patient might die by his hand because he is proficient in his work." The physician might feel that it is improper to provide any medical treatment which could endanger the patient. Indeed, it would be reasonable to conclude that dangerous medical treatment is always improper since it is surely wrong to injure the patient. Therefore, the Torah had to permit medical practice precisely because of its dangers. Although it is in general wrong to do anything to endanger another, medical practice is permitted despite its dangers.

Ramban added an important condition to the permission to practice medicine. He wrote that the physician is permitted to endanger the patient "because he is proficient in his work." Only a

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25. Tractate *Berachot* 60a; *Bava Kama* 85a.

well-trained physician is permitted to provide treatment.

In his *Torat ha-Adam*<sup>26</sup> Ramban took this principle one step further by prohibiting practitioners from healing unless they are proficient and there is no one greater. Anyone who practices while there is another more proficient is, in Ramban's view, "a spiller of blood." Proficiency is not enough; the practitioner must be the best available.<sup>27</sup>

According to Ramban, when the Talmud said that physicians may provide medical treatment, it meant that the most proficient physician available need not fear that the patient will die by his or her hand.

Ramban also resolved the ethical dilemma of providing medical treatment for patients who ought not accept it. It is true that accepting medical treatment is wrong. Therefore providing medical treatment in general makes the practitioner partially responsible for the wrongdoing of the patient in accepting treatment. It would be similarly wrong to provide any service which is ethically unacceptable.

In this case, however, medical treatment "has become the common practice." This means that the people have already lost their trust in God. That is why they turn to physicians instead of spiritual leaders. Since the people place their trust in the physicians' skill and knowledge, they no longer merit miraculous intervention. Instead they are subject to the laws of nature. Given the accomplished fact of the people's lack of trust in God and their being subject to the laws of nature, the Torah permitted the practitioner to provide treatment.

Since medical therapy has become the common practice, it follows that medical practitioners need not fear that they are usurping God's role as "the healer of all flesh" since the patients are indeed subject to the laws of nature and the practitioner can indeed cure them with medical science.

The second passage in which Ramban discussed the ethical status of medical treatment is also in his *Torat ha-Adam*.<sup>28</sup> After analyzing the Talmudic passage which concludes that the Torah permits medical practice, he added:

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26. Ed. Chevel, pp. 43-44.

27. Rabbi Yosef Karo codified this position in *Yoreh De'ah* 336:1.

28. Ed. Chevel, p. 42.

אבל האי רשות – רשות דמצווה הוא לרפאות, ובכלל פקוח נפש הוא, כדתנן: מאכילין אותו על-פי בקיאים. ותניא: מי שאחזו בולמוס – מאכילין אותו דבש וכל מיני מתיקה ומאירין את העניים. וכל אלו על-פי בקיאים מאכילין אותו... כולם בדרכים של מלאכת הרפואות עושין אותו. ואי-אפשר לדעת אותן אלא על-פי אותה חכמה... והואיל ומחללין שבת ברפואות, שמע מינה בכלל פקוח נפש הן. ופקוח נפש מצווה רבה היא.

הזריז הרי זה משובח; הנשאל מגונה; השואל שופך דמים. וכל שכן המתייאש ואינו עושה. ושמע מינה כל רופא שיודע בחכמה ומלאכה זו חייב הוא לרפאות. ואם מנע עצמו, הרי זה שופך דמים.

However, this “permission [to heal]” is in fact permission to fulfill the commandment to heal and is part of [the commandment of] lifesaving as was taught:<sup>29</sup> One feeds him [on the Fast of Yom Kippur] on the advice of experts. Further it was learned:<sup>30</sup> He who suffers faintness from fasting [on Yom Kippur] is fed honey or other sweets until his eyes become clear.

These patients are fed on the advice of experts... They are all treated in accord with medical practice. And it is impossible to know these things except by [medical] science... Since we profane the Sabbath by medical treatment, it follows that it is part of [the commandment of] lifesaving. And lifesaving is a great commandment.

He who is quick [to provide treatment] is praiseworthy; he who needs to be asked is reprehensible; he who inquires [whether it is permissible] is a spiller of blood. Worse is he who despairs and does nothing. It follows that every physician who knows this science and art is obligated to heal. If he declines, he is a spiller of blood.

In this passage Ramban sounds like Rambam. There is nothing wrong with medical practice. On the contrary, failure to provide treatment is a great sin and healing is the fulfillment of a great commandment.<sup>31</sup>

The tension between these two passages is clear. Which represents Ramban’s true view? Did he insist on the great value of medical practice as indicated in his *Torat ha-Adam*, or did he

29. Tractate *Yoma* 82a.

30. *Ibid.*

31. Rabbi Yosef Karo codified this position in *Yoreh De'ah* 336:1.

grudgingly permit the practitioner to heal while holding that it is fundamentally wrong to accept treatment as indicated in his *Commentary on the Torah*? Since he wrote his *Commentary on the Torah* in his old age, one might conclude that in the course of his life he changed his mind and that his final opinion is to be found there. But this is not the approach taken by the rabbinic commentators.

After referring to both passages, Chida<sup>32</sup> observed that in neither passage did Ramban permit the patient to seek medical treatment. This being the common thread in the two passages, the role of the practitioner in the *Torat ha-Adam* must be understood in terms of the fuller explanation in the *Commentary on the Torah*. Therefore, in Ramban's view medical practice is fundamentally wrong. When it is permissible, it becomes part of the commandment of lifesaving. In any event, it is always wrong for the patient to seek medical treatment instead of relying on God.

Although this was Chida's understanding of Ramban's view, Chida himself agreed with the position of Rashba. As we mentioned above these authorities prohibit reliance on miracles nowadays and therefore require seeking medical treatment.

Rabbi Eliezer Yehuda Valdenberg<sup>33</sup> also dealt with the tension between the passages by Ramban. He disagreed with Chida's understanding since in his view the passage in *Torat ha-Adam* seems to encourage the sick to seek medical treatment when read in its broader context.

Accordingly the tension between the two passages is even greater, touching not only on the ethics of providing treatment but also on the propriety of seeking treatment. The resolution of this problem lies in the orientation of the two passages. Ramban framed his opinion in the *Commentary on the Torah* in fundamental terms without considering external factors. Since, however, very few individuals are worthy of miraculous cures and since the Torah itself does not depend on miracles, Ramban in fact held medical practice to be permissible.

Further, medical practice in fact fulfills a commandment and is obligatory because man's life depends on it. Since God abandons those who seek medical practice to the laws of nature, they are in fact in danger and it is therefore proper to treat them. This is the

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32. *Birchei Yosef* 336:2.

33. *Ramat Rachel* 20:3, bound with *Tsits Eliezer*, pt. 5.

thrust of the passage in *Torat ha-Adam* which is framed in relative terms considering the realities of people's piety.

Rabbi Ovadya Yosef, who had been a judicial colleague of Rabbi Valdenberg before becoming Chief Separdic Rabbi of Israel, also wrote that Ramban in fact agreed that nowadays in the post-prophetic era medical therapy is obligatory.<sup>34</sup>

### **Rabbi Avraham Yeshayahu Karelitz (The Chazon Ish)**

In the summer of 1926, the Chazon Ish<sup>35</sup> wrote a letter strongly supporting medical therapy:<sup>36</sup>

הנני חושב את ההשתדלות הטבעיות במה שנוגע לבריאות למצוה וחובה וכאחת החובות להשלמת צורת האדם, אשר הטביע היוצר ב"ה במטבע עולמו, ומצינו מאמוראים שהלכו אצל רופאים מאוה"ע ומינים להרפא, והרבה מן הצמחים ובע"ח ומוצקים שנבראו לצורך רפואה וגם נבראו שערי חכמה שניתן לכל, לחשוב ולהתבונן ולדעת. אם כי יש דרך בדרכי ה' ית' לדלג על הטבע וכש"כ על רב השתדלות בה, מ"מ צריך לפלס מאד כי שתי הנטיות מקו האמת המדויק אינן ישרות, אם לבטוח יותר ממדרגת הבטחון שהגעת אליו באמת, ואם להאמין בהשתדלות יותר מדאי...

In matters of health I think it is a mitzvah and an obligation to exert oneself in accord with the laws of nature. This is an obligation to perfect the human form, which the Creator imprinted in His world. Some of the Talmudic Sages went to gentile physicians and even to heretics to be treated. Many plants, animals, and minerals were created for medical purposes. The Gates of Wisdom, which have been given to everyone, were also created to enable us to think, to meditate, and to know.

Indeed, there is a way among the ways of the Lord to skip over nature and all the more to skip over most exertion in accord with the laws of nature. But one must carefully weigh this matter for both ways of turning from the truth are wrong, whether your trusting [in God] exceeds your real level of trust or whether you believe too much in your own exertion...

34. *Resp. Yehavve Da'at* 1:61.

35. Lithuania/Bnei Braq, 1878-1953.

36. *Kovets Iggerot* 1:136.

The Chazon Ish apparently accepted the opinion of Ramban, whom he seems to have understood in a way very similar to Rabbis Valdenberg and Yosef. Although pious individuals might theoretically be worthy of miracles and therefore “skip over nature,” most people should seek medical treatment. For most people, following medical advice is obligatory.

To this the Chazon Ish added that if you have great trust in God it would indeed be wrong to “believe too much in your own exertion,” that is, to place too much trust in medicine. You must act in accord with your level of trust in God. Just as it is wrong to put too much trust in medical science, so is it wrong for those with insufficient trust in God to refuse treatment.

Ramban’s view, as accepted with minor variations by Rabbis Valdenberg, Yosef, and Karelitz, represents the mainstream of modern rabbinic thought. In practice, these authorities understand Ramban in a way which brings his thinking very close to Rambam’s.

### Rabbi Avraham ibn Ezra

Rabbi Avraham ibn Ezra’s<sup>37</sup> opinion on the question of medical practice was stricter than the other authorities we have seen. In his *Commentary on the Torah*<sup>38</sup> he wrote:

ולהתיר דבר הרופאין – דברי יחיד הם, כי לפי דעתי כי האמת להשען ישר דרך על בוראו ולא על בינתו. כך בדרך המזלות ובדרך הרפואות, כי הכתוב אומר: אני ה' רופאך. ואין צורך לעשות רופא אחר שותף עמו. וכן: והסירותי מחלה מקרבך; וברך את לחמך ואת מימך... וטעם "ורפא ירפא" מבניין הכבד הדגוש ואיננו כמו הקל – והמכה היא מיד אדם ויוכל אדם לרפאותה. ומי ירפא שיכה השם? רק הכתוב אמר: יך ויחבשנו. וטעם "אשר לא תוכל להרפא" – כאשר תרפא ממכת בן אדם.

The opinion permitting medicine is the opinion of a single Talmudic sage.<sup>39</sup> For in my opinion it is proper to rely directly on the Creator and not on one’s understanding. So it is with astrology and medicine for it is written: I am the Lord, your healer.<sup>40</sup> There is no need to make any other physician His partner. Thus it is written: I

37. Spain, 1089- c.1164.

38. Exodus 21:19; ed. A. Weiser, 2:287.

39. The single Sage was Rabbi Ishmael in tractate *Bava Kama* 85a.

40. Exodus 15:26.

*you must  
act in  
accord  
with your  
level of  
trust  
in God*

shall remove all illness from your midst; and: He shall bless your bread and your water.<sup>41</sup>

The meaning of the verse “and you shall have him thoroughly healed,”<sup>42</sup> which is inflected in the [factitive] verbal form of *piel* rather than *qal*, is that a blow inflicted by man can be healed by man. But who will heal whom God has smitten? Rather is it written: He has smitten, and He shall heal.<sup>43</sup> The meaning of “you will be unable to heal”<sup>44</sup> is that you will be unable to heal it [a blow inflicted by God] as you heal blows inflicted by man.

Compare Rabbi ibn Ezra’s comment on Exodus 15:26:<sup>45</sup>

יש לך לזכור כי בעיניך ראית המחלה והנגעים והמכות אשר שמת  
במצרים בעבור שמרדו בי. ואם תשמע חקי, תמלט מהם שלא אעשה לך  
כאשר עשיתי להם.  
ועוד כי “אני ה’ רופאך” – מכל מחלה שגזרתי היותם על הארץ –  
אין לך צורך לרופא, כאשר רפאתי המים המרים שאין יכולת ברופאים  
לרפאם.

You must remember that you have seen with your own eyes the illness and the blows and the plagues which I have placed upon Egypt due to their rebellion against Me. But if you obey My laws, you will escape them and I shall not do to you as I did to them.

Further, “I am the Lord, your healer” – you will need no physician for any disease which I have decreed to be upon the earth as I cured the bitter waters which no physician could cure.

Unlike Rambam and Ramban, Rabbi ibn Ezra distinguished between medical problems caused by man and those caused by God. The Torah permitted medical practice only for man-made problems since blows inflicted by man can be healed by man. But naturally occurring sickness is a blow inflicted by God. And blows inflicted by God ought to be healed only by God.<sup>46</sup>

41. Exodus 23:25.

42. Exodus 21:19.

43. Hosea 6:1.

44. Deuteronomy 28:27,35.

45. Ed. A. Weiser, 2:101.

46. It is interesting to note that at age sixty-four, shortly before beginning his *Long Commentary on Exodus*, Rabbi ibn Ezra developed a chronic sickness (see N. Golb,



Some authorities have rejected Rabbi ibn Ezra's opinion. Rabbi Simon ben Zemach Duran,<sup>47</sup> for example, dismissed Rabbi ibn Ezra's halachic conclusions because "he was not a well-versed authority on Jewish law."<sup>48</sup> Although Rabbi Duran was writing about a different topic, he would presumably conclude that Rabbi ibn Ezra's opinion opposing medical treatment also lacks weight.

More recently, Rabbi Moshe Mat (Moss)<sup>49</sup> also rejected Rabbi ibn Ezra's position, concluding that "no one may refrain from (treatment by) physicians; no one may be left to drown, for the words of the Sages permitting medical practice pertain to all forms of healing whether internal or external; and the Torah's permission to heal is in fact permission to fulfill the commandment to heal<sup>50</sup> as long as one's trust in God is constant and one believes that everything depends on His will and the physician is His agent."<sup>51</sup>

Without directly referring to Rabbi ibn Ezra, Rabbi Yoel Sirkes<sup>52</sup> expressed an opinion close to that of Rabbi Mat. "If the patient with a divinely inflicted wound turns solely to physicians rather than to God," he wrote, "medical treatment is prohibited. But if the patient trusts that God will send him a remedy, it is permissible to seek medical treatment even for a divinely inflicted wound. This is the practice in all Jewish communities."<sup>53</sup>

According to Rabbi Sirkes, Rabbi ibn Ezra's position is

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*Les Juifs de Rouen au Moyen Age* [1985], p. 184).

The first of the two passages quoted above is from his earlier *Short Commentary*, written before the onset of his chronic condition. The same passage appears in a slightly abbreviated form in the *Long Commentary* which he wrote while sick. It is apparent that his suffering did not lead him to change his mind regarding medical treatment.

In the year 1156, at the age of sixty-seven, Rabbi ibn Ezra completed his *Commentary on Psalms*, in which he repeated his opposition to medical treatment and his insistence that the sick rely solely on God in five separate passages with slight variations of formulation. See his comments on Psalms 30:3, 32:10, 38:10, 103:5, and 146:8.

As is apparent from the quoted passages, Rabbi ibn Ezra did approve of medical treatment for man-made problems. He himself was active in the field of medicine and wrote a medical book entitled *Nisyonot* (= Experiments), which is extant in the Bodleian and Paris manuscript collections. See M. Steinschneider, *Die Arabische Literatur der Juden* (1902), p. 156, ms. 106:2.

47. Spain/North Africa, 1361-1444.

48. *Resp. Tashbets* 1:51.

49. Galicia, 1551- c.1606.

50. Cf. Ramban in *Torat ha-Adam*.

51. *Matteh Moshe, Bikkur Cholim* 4:3 (= p. 221b in the Warsaw edition, 1876).

52. Poland, 1561-1640.

53. *Bayit Chadash, Yoreh De'ah* 336:1.

theoretically justifiable only in the case where the patient places his trust exclusively in medical treatment. But in practice medical treatment is acceptable as long as one recognizes that God is the ultimate source of all remedies. It follows that medicine is in fact permitted in the religious community of Israel.

Rabbi Eleazar Fleckeles<sup>54</sup> also rejected Rabbi ibn Ezra's opinion, finding it at odds with the views of the Sages of the Talmud. "God gave physicians the right to practice medicine," he wrote, "and they may treat any illness whether internal or external."<sup>55</sup>

However, other authorities seem to have accepted Rabbi ibn Ezra's position. For example, Rabbenu Bahya ben Asher also wrote in his *Commentary on the Torah*<sup>56</sup> that whenever man is healed in the Torah the root רפא (=heal) appears in the factitive verbal form of *piel* rather than *qal*. Whenever God heals the root is in the *qal* form. This is because men heal through pain and suffering, but God heals gently without pain.

This is a clear echo of Rabbi ibn Ezra's commentary, which also interpreted the root רפא in terms of its factitive verbal form (*piel*). Then Rabbenu Bahya went on to write that the Torah only permits medical treatment of external wounds. Internal disease, on the other hand, can be healed only by the Healer of All Flesh.

### The *Avnei Nezer*

In the summer of 1873 Rabbi Zeev Nachum Bornstein of Biale, Galicia, wrote a responsum to his son, Avraham of Sochaczew,<sup>57</sup> dealing with a patient who had been instructed by his physicians to drink prohibited milk. The question was: is it proper for the patient to act against medical advice and refuse to drink the milk?

In his responsum Rabbi Zeev N. Bornstein first analyzed the opinions of Rabbi ibn Ezra and Ramban against accepting medical treatment, and the opinion of Rabbi Sirkes in favor of treatment. In his conclusions, Rabbi Bornstein found room to reject medical advice:<sup>58</sup>

נראה דודאי יוכל החולה הצדיק לסמוך על האבן עזרא והרמב"ן  
כשנוגע למאכלות אסורות בחולי שבפנים שלא לסמוך על הרופאין כי

54. Prague, 1754-1826.

55. *Resp. Teshuvah me-Ahavah* 3, p. 69d.

56. Exodus 21:19.

57. Poland, 1839-1910.

58. Printed in Rabbi A. Bornstein, *Resp. Avnei Nezer, Choshen Mishpat* 193.

האבן עזרא והרמב"ן ז"ל המה רוב כנגד הב"ח ז"ל. ומש"כ הב"ח ז"ל ש"כן נהגו בכל גבול ישראל" – אינו ראי' כיון שהרמב"ן ז"ל בעצמו כתב שכן נהגו וכן הגמ' אמר כן. אבל כתב הרמב"ן שהמנהג אינו מצד חסידות.

ואין לומר שאין הולכין בפקוח נפש אחר הרוב. זה אינו כי נראה בחוש שהרופאים מועדים לקלקל, וטוב לפני ה' ימלט מהם.

וגם נראה לי ראי' להרמב"ן ז"ל מדברי הגמ' במס' ב"ק (פ') דאיתא שם: מעשה בחסיד אחד שהיה גונח דם מלבו, ואמרו הרופאים שאין לו תקנה עד שיינק חלב רותח משחרית לשחרית. לימים נכנסו חבריו לבקרו. כיון שראו אותה עז קשורה בכרעי המטה, חזרו לאחוריהם ואמרו: "לסטים מזויין בביתו של זה. ואנו נכנסין לבקרו?" ואף הוא בשעת מיתתו אמר: "יודע אני שאין בי עון אלא אותה העז שעברתי על דברי חברי."

וקשה; הא פקוח נפש דוחה כל האיסורים! אלא ודאי כיון שהיה חסיד, לא היל' צריך לעשות עפ"י הרופאין כדברי הרמב"ן ז"ל ובפרט בדבר איסור...

נהי דמן הדין מי שאינו צדיק גמור ורוצה להתרפאות ברופאים – פיקוח נפש דוחה גם איסור זה. רק לחסיד היל' נחשב עון...

אך כל הנ"ל בצדיק. אבל מי שאינו צדיק ורוצה להחמיר על עצמו במאכלות אסורות נגד הרופאים – עדיין יש לשאול בזה אם מותר... אך נראה לי דלענין זה מקרי צדיק, שמחמיר על עצמו במאכלות אסורות ובוטח בהש"י אפ"ל במה שיש בו סכנת נפשו. וא"כ אפ"ל מי שאינו צדיק – אפילו הכי מותר לו להחמיר על עצמו במאכלות אסורות נגד הרופאים.

אך עדיין יש לשאול אם מותר שלא לשאול ברופא באינו נוגע למאכלות אסורות... נראה לפע"ד כיון שנראה בחוש שהרופאים מועדים לקלקל, יוכל לבטוח בהש"י כדי שלא להכניס עצמו לסכנת נפשות במעשה. וגם שלענין זה מקרי צדיק, שבוטח בהש"י. וגם כי מפשט דברי הרמב"ן נראה שכל אדם שאינו עוסק ברפואות ובוטח בהש"י מקרי צדיק לענין זה. ולכל אדם יש רשות ומצוה לעשות כן... כל הנ"ל כתבתי להלכה ולא למעשה, כי אין אנכי כדאי להורות בענין חמור כזה. והש"יית ברחמיו יאיר עיני תורתו.

Regarding consuming prohibited foods for an internal disease, it seems that a righteous patient may rely on ibn Ezra and Ramban rather than on physicians. This is because the opinions of ibn Ezra and Ramban are a majority against the opinion of Rabbi Sirkes.

Rabbi Sirkes having written that [accepting medical treatment] "is the practice of all Jewish communities" proves

nothing since Ramban himself acknowledged that medical treatment was common practice and so it was written in the Talmud. Nonetheless, Ramban wrote that the practice [to accept medical treatment] is not an act of piety.

It is wrong to say that in matters of lifesaving we ignore the majority. Rather we see ourselves that the physicians habitually do damage. And it would be seemly before God to escape from them.

Further, it seems to me that a proof can be brought for Ramban's position from the Talmud [Tractate *Bava Kama* 80a]: There was once a certain pious person who suffered with his heart, and the physicians said that there was no remedy for him unless he sucked warm milk every morning. [A goat was therefore brought to him and fastened to the legs of the bed, and he sucked from it every morning.] After some days his colleagues came to visit him, but as soon as they noticed the goat fastened to the legs of the bed, they turned back and said: "An armed robber [i.e., a goat which is prone to pasture anywhere and thus eat the crops of the public] is in the house of this man! How can we come in to [visit] him?" [They thereupon sat down and inquired into his conduct, but they did not find any fault in him except this sin about the goat.] He also at the time of his death proclaimed: I know that no sin can be imputed to me save that of the goat, when I transgressed against the words of my colleagues."

This is a difficult [story] for lifesaving supersedes all prohibitions! However, since he was a pious person, he certainly did not have to act in accord with medical advice as Ramban wrote. All the more [did he not need to follow medical advice when told to violate] a prohibition...

For someone who is less than perfectly righteous and who wishes to accept medical treatment, lifesaving might indeed supersede even this prohibition [of keeping the goat]. Only for a pious person would it [keeping the goat] be considered a sin...

All this has to do with righteous individuals. But the question remains: may a patient who is not righteous be strict and reject medical advice to eat prohibited foods? ...But it seems to me that in this matter such a patient is to

be considered righteous for he wishes to be strict regarding prohibited foods and to trust in God even in a matter which is life threatening. Therefore, even one who is not righteous may be strict in avoiding prohibited foods against medical advice.

But we must still ask whether it is permitted to refrain from seeking medical advice in a matter which does not touch on prohibited foods... It would seem to me that since we see that physicians habitually do damage, anyone can put his trust in God so as not to endanger himself *de facto*. In this matter he is considered to be righteous because he trusts in God. Further, the simple meaning of the passage by Ramban indicates that anyone may do so...

All this I have written in theory, not for practice, because I am unworthy to give instruction in such a serious matter. May the Lord in His mercy enlighten my eyes in His Torah.

Rabbi Zeev N. Bornstein structured his responsum in an interesting way, using a number of halachic principles. First, he limited the halachic analysis to three sources: Ramban, Rabbi ibn Ezra, and Rabbi Sirkes. Since only Rabbi Sirkes supported patients accepting medical treatment, he was led to favor the majority view according to which rejecting therapy is an act of piety.

Rabbi Bornstein's application of the principle of majority is problematic. He ignored Rambam as well as the other authorities quoted above. In addition, he did not actually insist on the principle of majority. Instead, he concluded that the patient is entitled to rely on the majority opinion of Ramban and Rabbi ibn Ezra. Thus he did not invalidate the "minority opinion" of Rabbi Sirkes. Finally, he disregarded Rabbi ibn Ezra's opinion and the principle of majority in the remainder of the responsum and ultimately justified the Ramban's position on the basis of a Talmudic proof.

In view of these considerations, it seems clear that the principle of majority is not the basis on which Rabbi Zeev N. Bornstein based his conclusions. Instead he tried to bring a second principle to bear to resolve the controversy. This is the principle of common practice.

In general, a controversial issue can be resolved by determining whether the communities of Israel have accepted a uniform practice following one specific opinion. Such a uniform practice, if it

can be documented, would indicate the resolution of a controversy.

In this case, however, common practice cannot guide us in establishing the definitive halacha. Ramban himself acknowledged that common practice was not in accord with his opinion since the masses of people did in fact turn to physicians for treatment. That is why he held that providing medical treatment is permissible although he never approved of the patient seeking treatment.

Since Ramban held his opinion in the face of common practice to the contrary, the principle of common practice is useless in resolving this controversy. The existence of a common practice to accept medical therapy only proves that the masses of people do not have sufficient trust in God. Therefore, they in fact do not merit miraculous cures and it has become permissible for them to seek medical treatment. Medicine might still have no place in an ideal world, and a pious person might still be commanded to put his trust exclusively in God.

Since the principle of common practice cannot be applied here, Rabbi Bornstein turned to a third method to resolve the controversy. In this method, the rabbinic scholar analyzes Talmudic sources to determine which opinion is truly in accord with the thinking of the Sages.

Rabbi Bornstein's analysis of the Talmudic story of the goat demonstrates that although lifesaving procedures generally supersede Torah prohibitions, it is still improper for a pious man to violate any prohibition on the basis of medical advice. Since the point of the story corresponds with Ramban's position regarding medical practice, Rabbi Bornstein considered that position to be proven.

Having established Ramban's opinion on the basis of the Talmudic source, Rabbi Bornstein proceeded to break new ground. According to Ramban, it is clear that the pious should reject medical treatment and those of little piety are permitted to accept treatment. What about those who in general are of little piety yet wish to rely entirely on God in a specific illness? Should they be considered pious and therefore entitled to reject treatment, or are they obligated to follow the principles of those of little piety who must apply the laws of nature to be healed since they do not merit miraculous intervention?

Rabbi Bornstein was of the opinion that reliance on God makes the patient a pious individual who merits God's intervention. It

follows that it is proper for such a patient to refuse medical treatment even though he might not be so pious in other matters. Medical treatment is required only for those who put their trust in medicine.

The story of the goat calls for the pious individual to reject medical advice which contradicts Jewish law, for example by rejecting the advice to take a prohibited animal into the house. Is pious rejection of medical treatment limited to cases where the indicated treatment constitutes a violation of Jewish law, or is it proper for the pious to reject all forms of treatment?

Since physicians habitually do damage, it is not clearly advantageous for the patient to accept medical treatment. This implies that only complete certainty regarding the efficacy of a treatment would require its acceptance by the patient (assuming the treatment involves no halachic prohibitions). As long as such certainty is impossible, every patient is entitled to put his trust in God so as not to endanger himself with medical treatment. This idea was later developed by Rav Kook<sup>59</sup> when he wrote about the fundamental doubts which surround the whole of medical science.

One last point needs to be made regarding the modest statement with which Rabbi Bornstein ended his responsum. Formulations of modesty such as this do not necessarily detract from the weight of a rabbinic opinion. See *Yabbia Omer* 5, *Even ha-Ezer* 18:8,<sup>60</sup> where Rabbi Yosef assembled evidence that halachic authorities routinely ignore such statements of modesty when analyzing halachic literature.

Rabbi Zeev N. Bornstein of Biale was the author of the well-received *Aguddat Ezov*<sup>61</sup> and presumably would not have published his opinion had he not been convinced of its correctness. In addition, his son, the renowned Rabbi A. Bornstein of Sochaczew, apparently concurred with his father's opinion as he chose to include it in his own *Avnei Nezer* without comment.

In summary, Rabbi Bornstein supported Ramban's position and took it two steps further by applying it to individuals who are less than perfect saints as well as to modes of treatment which involve no specific violation of Jewish law. It is always proper for the patient to trust in God and refuse medical treatment.

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59. v. *supra*.

60. p. 332b.

61. Bilgoraj, 1909.

### The *Shem mi-Shemuel*

Rabbi Avraham Bornstein was succeeded by his only son, Shemuel.<sup>62</sup> Rabbi Shemuel Bornstein edited his father's *Avnei Nezer* (including his grandfather's responsum on rejecting medical treatment) and wrote *Shem miShemuel*,<sup>63</sup> a commentary on the Torah, which includes many of his father's ideas.

In the fall of 1916, Rabbi Shemuel Bornstein's son-in-law was very sick, perhaps with influenza, which was epidemic then, or another pulmonary condition. Although his physician thought it important for him to eat and drink, he apparently wanted to follow the position of Ramban or Rabbi ibn Ezra and to fast on Yom Kippur against medical advice. In this he was in accord with the opinions of his father-in-law's father (Rabbi A. Bornstein of Sochaczew) and his father-in-law's grandfather (Rabbi Zeev N. Bornstein of Biale).

Rabbi Shemuel Bornstein wrote a remarkable letter to his sick son-in-law in which he encouraged the patient to follow medical advice and eat on Yom Kippur:<sup>64</sup>

דבר מצבד, האומנם שמעתי מבתי מרגלית תחיל' בשם הד"ר שעל  
הריאה מצב בריאותך הולך וטוב, יתן ה' ויאמנו דבריהם שתשוב  
לאיתנדך במהרה. אבל כאשר יום הכיפורים ממשמש ובא, הנני להזהירך  
מאוד לבל תצדק הרבה בדבר הצום, וכפי אשר יאמר לך הד"ר כן תשמור  
לעשות. אם יאמרו שדי פחות מכשיעור, היינו פחות מחצי ביצה בתוך  
שמונה מינוט. אך באם יאמרו שגם זה לא יספיק, חלילה לך להחמיר. כי  
מי שצוה לצום ביום הכפורים הוא צוה לשמוע לרופא ושלא לצום. ואל  
תחשוב שאין להתיר אלא לחולה שיש בו סכנה לשעתו, חלילה, אלא  
אפילו לספק ספיקא, כי אין הולכים בפיקוח נפש אחר הרוב. ואפילו  
לזמן מרובה שאין האדם יכול להחמיר, וכן אמרו ז"ל (יומא פ"ג ע"א):  
אפילו החולה אומר "אין צריך" והרופא אומר "צריך", שומעין לרופא,  
ואפילו החולה הוא חכם בטבעיות ויודע לשער בשל אחרים, ואפילו הוא  
עצמו מומחה, אין שומעין לו.

ובטח זכור תזכור מה שכבר שמעת ממני הרבה פעמים, שעיקר  
היהדות להיות האדם בטל לדעת התורה וחכמי' ואפילו שיאמרו לך על  
שמאל שהוא ימין, וזה שאדם מבטל דעתו לדעת התורה וכופף אזניך  
לשמוע לדברי חכמים, הוא שוה יותר מהכל. ועל כן אין לך להצטער אם  
לא תצום ביוהכ"פ, כי במה שתשמע לדעת חכמי התורה שיצוו שלא

62. 1856-1926.

63. 1928-1934.

64. Printed in *Shem mi-Shemuel Mo'adim*, p. 262.



לצום, אם הרופא ציוה שלא לצום, הוא שוה יותר מעיקר הצום...  
 ובכן "אכול בשמחה לחמך ושתה בלב טוב יינך כי כבר רצה  
 האלקים את מעשיך". וידוע שפסוק זה הוא בת קול בימי שלמה על  
 שאכלו ביום הכפורים בבנין הבית (עי' במדב"ר פ"ז סוס"י ב).  
 הנני ידידך חותנך הדו"ש באהבה  
 ומברכך בחתימה טובה  
 שמואל

My daughter, Margalit, told me that the physician said that the condition of your lung is steadily improving, may God grant that his words be true and that you soon recover. However, as the fast of Yom Kippur is approaching, I most strongly warn you against being overly righteous regarding the fast. Follow the physician's instructions! [It would be well] if he tells you that less than a measure is sufficient, namely less than the bulk of half an egg in eight minutes.<sup>65</sup> But if he says that this measure is insufficient, heaven forbid that you be strict. For He who has commanded us to fast on Yom Kippur has also commanded us to follow medical advice and not fast. Do not think that the permission [to eat] applies only to those patients who are in immediate danger [of death], heaven forbid. Rather [the permission applies] even to distant dangers, for in matters of lifesaving we do not follow the majority. Even if the danger lies in the distant future, one may not be strict. Thus the Sages said [Tractate Yoma 83a]: Even if the patient says, "I do not need [to eat]" and the physician says, "He needs [to eat]," we follow the physician's advice. Even if the patient is trained in medicine and knows to evaluate others and even if he is an expert, we do not listen to him.

You surely remember having heard from me many times that the essence of Judaism is conforming to the opinion of the Torah and its Sages, even if they tell you that left is right. Setting aside your own opinion in favor of the opinion of the Torah and opening your ears to the words of the Sages<sup>66</sup> are worth more than all else.

65. The measure given here is somewhat stricter than required by the *Shulchan Aruch*. See *Orach Chayyim* 612:1, 618:7.

66. Cf. tractate *Zevachim* 29a.

Therefore, do not trouble yourself if you do not fast on Yom Kippur for following the opinion of the Sages of the Torah who commanded [you] not to fast, if the physician instructed [you] not to fast, is worth more than the fast itself...

Thus “Go, eat your bread with enjoyment, and drink your wine with a merry heart; for God has already approved of what you do.”<sup>67</sup> We know that this verse was spoken by a divine voice in the days of King Solomon when they ate on Yom Kippur during the construction of the Temple.<sup>68</sup>

Praying for your health with love, your friend and father-in-law blesses you with a good sealing [in the Book of Life],

Shemuel

This letter is not our first example of intergenerational conflict regarding medical treatment. Rashba’s principle teacher was Rabbenu Yona ha-Hasid of Barcelona, whom he always called מורי הרב (= my teacher, the master). However for a time he was also a disciple of Ramban, whom he called מורי הרמב"ן (= my teacher, Ramban). In any event, we have seen that Rashba disagreed with Ramban’s position opposing medical practice. Rabbi Shemuel Bornstein’s letter presents us with a conflict of opinions not only between teacher and disciple, but between the generations of a single family.

Unlike his father and grandfather who approved of patients’ piety in avoiding any Torah prohibition, Rabbi Shemuel wrote “against being overly righteous.” Unlike the elder Bornsteins who supported patients acting against medical advice, he insisted that his son-in-law “follow the physician’s instructions.” Whereas the responsum printed in the *Avnei Nezer* makes clear that “in matters of lifesaving it is wrong to ignore the majority,” Rabbi Shemuel wrote, “in matters of lifesaving we do not follow the majority.”

His grandfather’s responsum had been written in 1873. Rabbi Shemuel completed editing and printing the fourth volume of his father’s *Avnei Nezer* containing that responsum in 1926, the last

67. Ecclesiastes 9:7.

68. See *Midrash Numbers* 17:2 (end).

year of his life. It is therefore possible that he was unaware of the elder Bornstein's opinion when he wrote his letter to his son-in-law in 1916. If so, one might conjecture that towards the end of his life he would have changed his mind after studying his grandfather's opinion.<sup>69</sup>

*Source: ASSIA Jewish Medical Ethics, Vol. III, No. 2, September 1998, pp. 36-47*

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69. Halachic authorities occasionally rely on conjecture such as this to reduce the weight of an opinion. The usual formulation is: If A. had known the earlier opinion of B., he might have come to different conclusions. See Maharik, *Shoresh* 96; *Resp. Radbaz* 4:1369 (=297); *Rama, Choshen Mishpat* 25:2; Shach, *Yoreh De'ah* 242:8 (*hanhagot*).

It is also unlikely that Chazon Ish, who wrote his letter in the summer of 1926, was familiar with the *Avnei Nezer*, which was printed in the same year. However, the Chazon Ish generally analyzed halachic sources independently, coming to his own conclusions without being influenced by his contemporaries. His support for medical treatment, based on his understanding of Ramban, would probably have remained strong even if he had seen the *Avnei Nezer*.