

Anesthesia in Circumcision – an Obligation?

A Letter to the Editors

I am Jay Reidler (Harvard College '09; currently studying *Refuah V'Halacha* in Yeshivat Hakotel for the year; I've enjoyed coming to the Schlesinger lectures very much over the year).

I read Dr. Steinberg's recent article titled "Anesthesia in Circumcision – Medical and Halachic Consideration"¹ and it prompted some important questions:

1a) Let's take the theoretical example of a patient with a malignant tumor on their skin. A doctor has a *chiyuv* (*V'Hashevota Lo*, etc) to remove that tumor, and is permitted to cut off/around the tumor, since the *issur* of *chabala* (hurting someone) is overridden/waived. Now let's say the doctor cuts off the tumor without any anesthesia, and in so doing causes unnecessary pain to the patient (there was no medical justification for not using anesthesia) – has he violated any *issur* (e.g. *chabala*)? My impression is that the doctor had permission to do a certain amount of *chabala* (i.e., cutting off/around the tumor), but did not have permission to cause unnecessary pain and so he does violate an *issur*.

1b) If the doctor does violate an *issur* in question 1a for causing unnecessary pain, would a patient be permitted to accept such a treatment without anesthesia, if doing so has no medical benefits? If my understanding of *chabala* in question 1a is correct, this would not be allowed either because it would be tantamount to self-inflicted *chabala*, which is also an *issur*?

This question is very relevant to medicine in general, because it examines whether a doctor has a *chiyuv* to minimize pain even when he is doing a necessary/permitted treatment, and asks if an *issur* is overridden if he doesn't (other example – a doctor who can give a local anesthetic before giving a shot, but doesn't because "the child

¹ See pp. 86-103.

won't remember" or "it's too much of a hassle for a small shot and not worth it...").

I believe R' Moshe Feinstein took the idea of causing unnecessary pain into account when determining whether to prolong the life of the terminally ill patient – but I don't recall him employing the concept of *chabala*.

2) The relevance of the above question to Dr. Steinberg's article is as follows: Dr. Steinberg seems to conclude that, while according to some *poskim* one may not use anesthesia for an infant/adult, according to many it is permitted (*mutar*) to use anesthesia on an infant. Now, if we hold according to the latter *poskim* that it is *mutar*, shouldn't it be a *chiyuv* to use anesthesia! The mitzvah of circumcision gives us the right, perhaps by the concept of *aseh docheh lo ta'aseh*, to cause a certain degree of *chabala* to the child (e.g. removing the *orlah*), but does it give us permission to cause unnecessary pain while doing this?? In the time before anesthesia, the mitzvah of *brit milah* may have allowed us to inflict pain while doing circumcision because there was no alternative, but now that we have anesthesia, do we still have permission to cause this unnecessary pain?

Thank you very much,
Jay Reidler

Response:

There are two elements in Jay Reidler's interesting claims. First, he emphasizes that even where the fulfillment of a mitzvah supercedes the prohibition to injure a person, it is still necessary to minimize suffering as much as possible. He theorizes further that a failure to minimize suffering constitutes a violation of unnecessarily injuring a person.

Second, he applies this principle to the mitzvah of circumcision. He claims that if palliative (pain relief) treatment is permitted and not medically counterindicated, then *halacha* requires it so that the prohibition of injuring not be violated.

These claims call for two comments:

First, the obligation to avoid pain whenever possible is not undermined, as it does not only depend on the fulfillment or the violation of the prohibition of injuring. This obligation derives from the verse "Love thy neighbor like thyself (Leviticus 19:18)". This verse obligates us to minimize suffering even in people who have

been sentenced to death by the court (*Sanhedrin* 52a, etc.). Therefore, we are clearly required to reduce the suffering of a circumcised infant whenever it is medically justified and free of any *halachic* prohibition.

Second, it is by no means obvious that failure to minimize suffering constitutes a violation of the prohibition of injuring a person when the injury itself is permitted. For example, the *Kesef Mishne* (*Mamrim* 5:7) implies that only unnecessary physical injury violates the prohibition of injury, not unnecessary pain added to an underlying act of permitted injury. If so, Jay Reidler's beautiful theory is problematic and calls for careful study of the medieval commentaries on *Sanhedrin* 84b, etc.

In summary, administering sucrose or sweet wine to the infant before the circumcision is certainly advisable as far as the *halacha* is concerned as there is today no doubt that this reduces the infant's pain.

From the medical point of view, local anesthesia entails some risk as Prof. Steinberg mentioned in his article. The risk is, however, very small. But since we are dealing with scores of thousands of circumcisions, or hundreds of thousands worldwide, the risk of an infant's death is real. Therefore, there is neither medical nor *halachic* justification for such anesthesia.

Pain relief medication has not yet been proven completely safe for infants. The same can be said for laser procedures. Therefore, it is inadvisable to perform epidemiological experiments on newborns.

Aside from sucrose and sweet wine, treatment with EMLA, which the great *poskim* have not prohibited, remains an option to be decided upon by the rabbi, the parents, and the *mohel*.

Sincerely,
Mordechai Halperin

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