

Retracting an Agreement to Donate Bone Marrow:

Introduction to the Halachic Discussion

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There are two elements in the *halachic* discussion:

- (a) The degree of the obligation to donate bone marrow.
- (b) Coercion in cases of life and death.

The Degree of the Obligation to Donate Bone Marrow

The following aspects of the question should be discussed:

1. The laws of alienation under the rubrics of “I shall give...” and “an acquisition of mere words as mentioned” in *Baba Batra* 3a.
2. The laws of alienation under the rubric of a person's ownership of his body and his capacity to sell its parts.
3. The laws of vows and oaths in *mitzva* contexts.

Coercion in Cases of Life and Death

We must discuss *mitzvot* and obligations dealing with the obligation to save lives on the one hand, and prohibitions dealing with personal injury on the other hand.

There are six questions to be asked:

1. Does donation of bone marrow constitute the fulfillment of a *mitzva*?
2. Is there an obligation to donate bone marrow?
3. Can a donor be compelled to save a life by donating bone marrow?
4. If after committing to donate and after the recipient has undergone a procedure to destroy his immune system, can the donor retract his agreement?
5. If the donor does retract his commitment to donate after the recipient's immunosuppression, is he guilty of murder in the eyes of *halacha*?

6. If he is considered guilty of murder, may the donor's bone marrow be forcibly taken without his agreement?

Rabbi Moshe Sternbuch of the *Eida Chareidit* in Jerusalem has addressed these six questions and we are publishing his responsum in this issue.

In my opinion, there is an additional *halachic* source to be added to the discussion beyond the material in Rabbi Sternbuch's responsum. In connection with the sixth question, Rabbi Moshe Feinstein dealt with a related issue (*Iggerot Moshe Y.D. 2:174d*). He wrote about false witnesses who brought about the conviction of an innocent man in a capital case. The only way to prevent the defendant's execution was the amputation of the witness' arm :

The court cannot obligate them [to undergo amputation] because they have no credibility in retracting their testimony. Nonetheless, they themselves know that the defendant will be executed because of their testimony. They are therefore obligated to undergo the amputation so that they will not be guilty of causing the defendant's death. This will save them from divine punishment.

In other words, but for the lack of credibility in retracting testimony, the court would order the amputation if this were the only way to save the defendant's life.

It follows that Rabbi M. Feinstein's decision is in agreement with that of Rabbi M. Sternbuch. The court should indeed order an assault on the body of a person causing another person to die if that is the only way to save the victim.