Dispensing Medical Marijuana: Some Halachic Parameters

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A PHYSICIAN'S TASK IS TO HEAL THE SICK AND TO DO no harm.[2] Jewish medical oaths as well as the Hippocratic oath constantly emphasize the palliative aspect of medical care.[3] Jewish law (halachah) has codified the role of the physician, and prescribes strict standards regarding the treatment of patients.[4]

In January 1997, the White House Office of National Drug Control Policy asked the Institute of Medicine to assess the potential health benefits and risks of marijuana and its cannabinoid compounds. Their report, released in March 1999, recommends continued research into physiological effects of marijuana's constituent cannabinoids and their potential therapeutic value for pain relief, including closely monitored clinical trials of smoked marijuana. It has been documented that marijuana is an analgesic for sufferers of nausea related to chemotherapy, appetite and weight loss related to AIDS, migraine headaches, Alzheimer's, muscle spasms, fibromyalgia, arthritic pain, glaucoma and other conditions. The Institute of Medicine's report also recommends short-term use of marijuana for patients with debilitating symptoms for whom all approved medications have failed and relief of symptoms could be reasonably expected, with treatment administered under medical supervision and the guidance of an institutional review board.[5]

If marijuana is superior to other drugs, and given that there are a number of concerns about its continued usage, we need to analyze a number of pertinent halachic issues to determine if it is permissible to prescribe it according to Jewish law:[6]

The issues raised here are not based on opinion or emotion. This essay seeks to open the door to a fuller discussion of the topic based on halachic categories. We are not dealing with legal issues from the perspective of sec-

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ular law. A number of states have legalized medical marijuana. The United States Supreme Court has determined that medical necessity does not justify the distribution of marijuana despite state laws permitting it. Our discussion is framed by strictly halachic considerations.[7]

Since marijuana is still illegal in most places, does the principle of *dina d'malchuta dina* (דינא דמלכותא דינא – lit., the law of the land is the law) apply?

Even where marijuana has been legalized, do the dangerous side effects of the drug militate against its use?

Does compassion for the patient override concerns of possible long-term harm?

Under which circumstances may a patient put himself into a potentially harmful situation?

If the non-medicinal properties of marijuana promote a feeling of well-being so that a patient feels relief, does that constitute a valid reason to write a prescription?

A full discussion of the medical, legal and social issues relating to medical marijuana is beyond the scope of this paper and is not my primary focus.[8]

1. *Dina D'malchuta Dina*

The issue of *dina d'malchuta dina* seems fairly straightforward. We must follow the law of the land in which we live.[9] Even if Jewish law permits the administration of medical marijuana, the very fact that it is prohibited by civil law binds us to follow the law of the land. While there are nuances in the extent and application of this principle, and while our first loyalty is to the Torah and the Jewish legal system, the halachah expects us to be upstanding citizens. Our regard for civic obedience and responsibility may indeed be a yardstick of our ability to sanctify God's Name and be a light to the nations. Because marijuana is an illicit drug, one might assume that it is halachically prohibited, as well. However, *dina d'malchuta dina* does not apply to matters of *issur v'heter*–ritually obligatory or prohibited activities, such as Shabbat, kashrut, inheritance or divorce. It applies only to monetary, commercial or civil law, and not to religious law.[10] Since alleviation of pain and suffering is a religious obligation,[11] then *dina d'malchuta dina* does not apply. Furthermore, some *poskim* [rabbinic decisors] stipulate that *dina d'malchuta dina* is only binding when it does not oppose Torah law, i.e. only when it relates to matters not dealt with explicitly by the halachah.[12]

Rabbi Shlomo Ibn Adret (Rashba) cautions us that the Torah is of primary and paramount importance for the Jewish people. Were we to defer to the law of the land to regulate every activity, we would effectively nullify much of Jewish law and abrogate the Torah itself.

> ...However, to rule a certain way because it is the law of the Gentiles...is forbidden..., and it is prohibited by the Torah....If we were to accept this argument, we would nullify the first-born son's rights of inheritance and uproot all of Jewish law. What need would we have for holy books written for us by Rebbi and Ravina and Rav Ashi? Jews could simply teach their children the laws of the Gentiles and build altars in the Gentile houses of study. God forbid that such a thing ever happen to the Jewish people; God forbid. The Torah itself would wear sackcloth.[13]

There are those who suggest that *dina d'malchuta dina* applies only to *dinei malkhut*, i.e. those areas in which the State has legitimate interests needed for the proper administration of government and for the smooth functioning of society. These include taxes, roads, traffic regulations, safety, etc. Laws that infringe on the social, interpersonal, judicial, cultural, religious and personal areas of life are excluded from *dina d'malchuta dina* and are regulated by Torah law.[14]

Civil law does allow alcohol and tobacco, which are far more dangerous than marijuana dispensed for medical reasons. Casuistic[15] and philosophical arguments can also be mustered to nullify *dina d'malchuta dina* in this case.

State officials will not prosecute patients who use medical marijuana, and the prospect of federal enforcement is fairly remote. This then begs the question of defining *dina d'malchuta dina* in our case. Does it refer to laws on the books or only to laws that are enforced? Logic would dictate that *dina d'malchuta dina* only applies to laws that are enforced. Just as a king is only a king if he has loyal subjects, so too laws that are not enforced eventually lose their status as laws. At issue, however, is still the question of the feasibility and advisability of a physician prescribing marijuana. In those states where it is legal there seems to be minimal risk. In states where it is still illegal, how far must an observant physician go to help alleviate pain and suffering by prescribing marijuana?

Civil disobedience was defined by Ghandi as follows:

> He who resorts to civil disobedience obeys the laws of the state to which he belongs, not out of fear of sanctions, but because he considers them to be good for the welfare of society. But there come occasions, generally rare, when he considers certain laws to be so unjust as to render obedience to

> them a dishonor. He then openly and civilly breaks them and quietly suffers the penalty for their breach.[16]

Couched in Jewish terminology, the obligation is not to stand idly by while someone else's life is endangered (Leviticus 19:16).[17] This is especially true in our scenario, since according to *Tosafot,* living with pain is worse than death.[18] Furthermore, according to some *Rishonim* (early decisors), *dina d'malchuta dina* only applies for old established laws, not to newly minted legislation based on current conditions.[19] Others hold that laws created through judicial interpretation (e.g., by rulings of the Supreme Court), as opposed to legislation, are not part of *d'malchuta dina.*[20]

2. Providing immediate relief

In his responsum opposing the use of recreational marijuana, Rabbi Moshe Feinstein, a leading *posek* of the 20th century, wrote that marijuana limits one's ability to exercise free will, alters one's sense of reality, impairs one's judgment and affects one's ability to function. A habitual marijuana user cannot express himself freely or act responsibly. All of these prevent him from properly fulfilling religious obligations, especially prayer.[21] Our case concerns medical, not recreational, marijuana. Jewish law sanctions the desecration of the Sabbath for seriously ill individuals,[22] exempts even those in mild discomfort from religious obligations,[23] and extends certain exemptions to others who are ill.[24] One who is suffering and is in such pain that only the administration of marijuana can help falls into this category.

Jewish law makes no real distinction between illness and physical pain. However, the extent to which pain justifies exemptions from religious law is the subject of some dispute. A minor, localized ache does not warrant the suspension of any religious precepts. However, pain affecting the entire body invokes the concessions applicable to "real" illness.[25] Despite the fact that the Talmud sets no criteria for pain-based exemptions, it states, "The Rabbis did not seek to validate their decrees in cases of pain."[26] Rabbi Yair Bacharach ruled that specific concessions apply only in cases of severe pain, yet Rabbi Chaim Yosef David Azulay applies these concessions to all precepts if one is in any pain.[27] In either case, candidates for medical marijuana qualify.

The halachic imperative to heal is a reflection of Judaism's belief in the absolute sanctity and incalculable value of human life.[28] This ethic of prioritizing human life far surpasses any other legal system in that it takes prece-

dence over virtually all other considerations. As a result, almost any Jewish law–and by extension most civil laws–can be suspended and/or violated in order to save or even prevent a potentially life-threatening situation from developing.

Medical marijuana is used to treat patients with AIDS and those receiving chemotherapy–both of which are life-threatening scenarios–as well as those suffering from glaucoma, which Jewish law regards as equally hazardous.[29] In fact, serious eye injury/disease was the only condition that was always regarded as "dangerous" because of the connection between the optic nerve and the brain.[30] If one must violate the laws of the Sabbath or of kashrut in such situations, Jewish law could also sanction an otherwise illegal drug, such as marijuana. In non-life-threatening situations (e.g. chronic back pain, migraine headaches, etc.), medical marijuana might also be sanctioned by Jewish law if no other effective remedy is available. This is based on the concept that the halachic obligation/understanding of healing is not limited only to saving lives, but extends to the alleviation of pain and suffering, as well.[31]

3. Potentially dangerous side-effects

Although Jewish law forbids self-endangerment,[32] there are acceptable assumptions of risk. Activities that society deems routine and are not themselves considered dangerous are permissible despite the potentially hazardous nature of the activity.[33] Only clear and recognized danger is prohibited.

Maimonides cautions us to abstain from any activity that is potentially harmful to one's health.[34] Some authorities maintain that any act, even if only possibly dangerous, is biblically prohibited and we rule stringently in cases of doubt.[35] Others prohibit such activities based on the principle of *rov,* i.e. even a statistical possibility.[36] Others still prohibit even non-life-threatening activities since any harm to the body is considered potentially life-threatening.[37]

An illustration of how seriously this was observed is taken from an anecdote about Rabbi Chaim Halberstam (1793-1876), the Tzanzer Rebbe. He was told by his physician that it would be dangerous to eat his customary horseradish for maror at the Passover seder. At his seder, the Rebbe took the appropriate amount of horseradish in his hand and recited the blessing, "Blessed be Thou, Lord our God, King of the universe, Who has sanctified

us with His commandments and commanded us to scrupulously protect our souls [i.e. bodies]." [38] He then put the maror aside and continued with the seder.[39]

All human activities, to one degree or another, entail some element of danger. Driving a car, crossing a street, swimming, flying in airplanes, even ingesting some medicines, all represent a potential hazard. There are no absolute guarantees of safety. Yet, despite these risks, life goes on. The Talmud analyzes these issues and concludes that risks that have become socially conventional are acceptable.[40]

3. Acceptable Risks[41]

Jewish law stipulates that one who has returned safely from a sea journey, a trip across the desert, or survived other dangerous activities must offer a thanksgiving sacrifice, which today takes the form of *birkat hagomel,* a blessing of thanksgiving.[42] Rabbi Jacob Ettlinger (1798-1871) questioned the premise of the permissibility of taking these journeys in the first place. He answers his own rhetorical question by drawing a distinction between an immediate danger and a potential or future danger. An immediate danger is to be avoided. A potential danger may be assumed if, in the majority of cases, no harm will occur. Traveling the ocean or the desert may be dangerous, but since most travelers return unharmed, it is an acceptable risk.[43]

One *might* argue, based on this analysis, that the use of any medication that *may* shorten the life of the majority of users cannot be automatically sanctioned simply because it is in common use. This may be the case even if the danger is far in the future and even if life expectancy is diminished only marginally. This issue is raised because medical marijuana is usually ingested via smoking, and all available medical data confirms the dangers of smoking.[44] However, there are no explicit halachic references to the role of statistical probability of prolonging life versus the odds of shortening life, nor are later discussions conclusive.[45]

4. Compassion

Compassion is one of the first of God's attributes (Exodus 34:6-7), and since we are bidden to behave *imitatio Dei,* it is also a paramount virtue in Judaism. If the means are available to alleviate pain and suffering, and the treatment falls within halachic guidelines, then a good argument can be made to allow for the administration of medical marijuana.

The Classic Case

The Talmud records some pithy fatherly advice given by Rav to Chiya his son, including the following admonition (BT P'sachim 113a): "*Do not take drugs.*" Rashi comments that drugs are habit-forming, because "they will become an obsession and you will squander your money on them." Rabbi Menachem HaMeiri comments that this is just one of a number of physical indulgences to be avoided. Rabbeinu Chananel in his commentary emphasizes the habit-forming nature of drugs.

Rashi's alternate interpretation (i.e., לישנא אחרינא, *lishna acharina)* focuses on the possible harmful effects of drugs. What is good and efficacious for some is harmful to others.[46] In either event, Rashi endorses Rav's advice. Rabbi Samuel ben Meir (Rashbam) understands this advice as being medical in nature. Avoid drugs, he says, because of the reasons that Rashi gives–they are habit-forming and expensive. Even for medical treatment they are to be avoided "unless there is no alternative available." Medicine must be taken with caution. Indiscriminate consumption of drugs can be injurious or fatal.

Rashbam's key phrase, "unless there is no alternative available," is the crux of our discussion. When conventional medications do not provide relief, and marijuana has been found to be highly effective, a number of states in the United States have provided marijuana prescription cards that enable patients to purchase it from regulated sources. This ruling is in consonance with the halachic position that analgesics may be administered even at the risk of possibly shortening a patient's life, as long as the purpose is solely for relief from acute pain.[47]

Conclusion

As guardian of the body and soul, of the treasure of life entrusted to man, a person is duty-bound to avoid unnecessary risk and danger. In the course of life, man has been granted license to engage in commonplace activities trusting that "God preserves the simple" (Psalms 116:6). Activities that are not routine in nature require more careful scrutiny. Often during a person's lifetime, occasions arise when medical intervention becomes necessary. Attendant medical decision-making requires careful assessment of potential risk. Some forms of intervention are, relatively speaking, risk-free and hence mandatory; others border on the foolhardy and are to be eschewed; yet others require judicious balancing of potential benefit against possible harm. Discretionary intervention in the latter cases may be under-

taken with the prayer to the Guardian of all life that the carefully considered decision of the wise also merits providential blessing.[48]

Given that habit-forming narcotics are routinely prescribed for the relief of pain, and that such relief is mandated by the halachah, and given that ingesting marijuana can also relieve serious pain, it would seem that medical marijuana can be prescribed according to Jewish law.

The Jewish legal-ethical system weighs conflicting values. The Sabbath is a value and the preservation of life is also a Jewish value. When they come into conflict, the halachah requires us to violate Shabbat so that a person can live to observe future Shabbatot. A similar calculus can be accorded the values of pain relief and potentially harmful medical marijuana. Concerning the treatment of pain on Shabbat, Rabbi Shlomo Zalman Auerbach ruled that pain can increase the threat to a person's life. Therefore, anything that will ease the suffering of a seriously ill person and refresh him is part of the commandment of saving a life. This is so even if the relief is for a limited period (e.g., with narcotics)–one must still treat this pain on Shabbat.[49]

If this is so on Shabbat, then by inference from a major to a minor precept (קל וחומר, *kal v'chomer*), medical marijuana may be prescribed by physicians in states where it is legal to do so, and be taken by patients to relieve pain. It may also be appropriate to prescribe medical marijuana in all states based on Leviticus 19:16.

The final word is that a physician heals with all types of herbs that God produces.[50]

NOTES

[1] This discussion has far-reaching implications. It is not my intention to fully examine all the parameters of *dina d'malchuta dina,* the halachic principle that "the law of the land is the law"; competing values in Jewish ethics; legal and moral issues; etc. I seek only to raise some issues, spark discussion, and offer some direction for a fuller treatment of the topic. This is an introductory essay to a topic that could easily become a book.

[2] See Exodus 21:19 and Babylonian Talmud tractates B'rachot 60a and Bava Kama 81b and 85a; Maimonides, *Commentary to the Mishna, Nedarim* Chapter 4:4; and *Mishneh Torah, The Laws of Vows* 6:8.

[3] See Lord Immanuel Jakobovits, *Jewish Medical Ethics* (New York: Bloch Publishing Co., 1975) 99-105, A. Friedenwald, "Jewish Physicians and the Contributions of The Jews to the Sciences of Medicine," *Publications of The Gratz College* I (1897); 107ff.; and Harry Friedenwald, "Ethics of The Practice of Medicine From The Jewish Point of View," *Johns Hopkins Hospital Bulletin,* XXVIII (1917), 18.

[4] See Jakobovits, 106-118, and *Shulchan Aruch Yoreh De'ah* 336:1.

[5] See The Institute of Medicine of The National Academies, 1999, *passim*; See also Louis Goodman and Alfred Gilman, *The Pharmacological Basis of Therapeutics,* 1st Edition) (New York: McGraw-Hill, 1941), 186.

[6] The suppositions put forth in this article are purely theoretical and not intended to be determinative of halachic practice. All questions related to the practical applications of this discussion should be referred to a competent *posek,* rabbinic decisor.

[7] See Gonzales v. Raich, No. 1454, decided on June 6, 2005. The decision overturned a 2003 ruling by a federal appeals court that shielded California's Compassionate Use Act from federal drug enforcement. The laws in 11 states remain in effect. State officials will not prosecute patients who use medical marijuana, and the prospect of federal enforcement is fairly remote. In July 2001, Canada became the world's first country to regulate the use of marijuana. The Food and Drug Administration issued a statement on April 20, 2006 denying that there are any medical benefits to marijuana. (*The New York Times,* April 22, 2005, A11) *The New York Times* editorial for April 22, 2006, captures the purely political nature of this cynical and meretricious statement:

> ***The Politics of Pot***
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> The Bush administration's habit of politicizing its scientific agencies was on display again this week when the Food and Drug Administration, for no compelling reason, unexpectedly issued a brief, poorly documented statement disputing the therapeutic value of marijuana. The statement was described as a response to numerous inquiries from Capitol Hill, but its likely intent was to buttress a crackdown on people who smoke marijuana for medical purposes and to counteract state efforts to legalize the practice.
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> Ordinarily, when the F.D.A. addresses a thorny issue, it convenes a panel of experts who wade through the latest evidence and then render an opinion as to whether a substance is safe and effective to use. This time the agency simply issued a skimpy one-page statement asserting that "no sound scientific studies" supported the medical use of marijuana.
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> That assertion is based on an evaluation by federal agencies in 2001 that justified the government's decision to tightly regulate marijuana under the Controlled Substances Act. But it appears to flout the spirit of a 1999 report from the Institute of Medicine, a unit of the National Academy of Sciences.
>
> The institute was appropriately cautious in its endorsement of marijuana. It said the active ingredients of marijuana appeared useful for treating pain, nausea and the severe weight loss associated with AIDS. It warned that these potential benefits were undermined by inhaling smoke that is more toxic than tobacco smoke. So marijuana smoking should be limited, it said, to those who are terminally ill or don't respond to other therapies.
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> Yet the F.D.A. statement, which was drafted with the help of other federal agencies that focus on drug abuse, does not allow even that much leeway. It argues that state laws permitting the smoking of marijuana with a doctor's recommendation are inconsistent with ensuring that all medications undergo rigorous scrutiny in the drug approval process.
>
> That seems disingenuous. The government is actively discouraging relevant research, according to scientists quoted by Gardiner Harris in yesterday's Times. It's obviously easier and safer to issue a brief, dismissive statement than to back research that might undermine the administration's inflexible opposition to the medical use of marijuana.

[8] There are cognate issues that do inform this discussion, including the history, value and use of medical marijuana; federal and state government laws and public policies; pending court cases on the use of medical marijuana; and legal issues facing patients and physicians. See http://medicalmarijuanaprocon.org for a complete listing of these discussions, as well as links to them.

[9] See BT Bava Batra 54b; Leo Landman, *Jewish Law in the Diaspora: Confrontation and Accommodation* (Philadelphia: Dropsie College, 1968); and Menachem Elon, ed., *The Principles of Jewish Law* (Jerusalem, Encyclopaedia Judaica, 1975), *passim.*

[10] See Rabbi Yeshaya miTrani, *Tosafot RI'D* to BT Gittin 10b; *Teshuvot Chakhmei Provence, Choshen Mishpat* 49; *Tashbetz*, I, #158; *Teshuvot Sha'ar Efrayim* 79; *Nachalat Shiva, Chelek Hateshuvot* #31; *Teshuvot Bet Shlomo Choshen Mishpat* #130; *Teshuvot Binyan Tzion* II:15; Rav Y.E. Henkin, "*B'inyan Dina D'malclhuta Dina,*" *HaPardes*, 31:54, 3-5; and *Mishpetei Uzziel, Mahadura Tinyana III, Yoreh De'ah* #92.

[11] See note 2 above. Concerning the alleviation of pain on Shabbat, see sources cited by Abraham S. Abraham, *Nishmat Avraham* I:328(4a) including Rav Shlomo Zalman Auerbach z"l.

[12] See *Teshuvot Chakhmei Provinzyah* (A. Sofer, ed., 1967) H.M. #49; *Siftei Kohen* to H.M. 73:39; and *Teshuvot Chatam Sofer*, H.M. #44. This distinction is not altogether clear since it is difficult to find the dividing line between what is and what is not Torah law since, according to the *poskim,* the solution to every problem is to be found in the halachah itself.

[13] *Teshuvot Rashba*, VI:254.

[14] See *Beit Yosef* to C.M. 26 (in the name of the Rashba); *Maggid Mishneh, H. Malveh v'Loveh* 27:1; Ramban to BT Bava Batra 55a; *Teshuvot Rivash* #204; and *Teshuvot Maharik shoresh* 187.

[15] Casuistry is used here in a most positive manner, not at all in a pejorative sense. "Casuistry is perhaps the most carefully elaborated way of taking account of the diversities of behavior while retaining the integrity of the principle according to which behavior is to be judged." Paul Lehman, *Ethics In a Christian Context*, New York: Harper & Row Publishers, 1963, 290.

[16] See Mohandas K. Ghandi, *Non-Violent Resistance* (New York: Shocken Books, 1961), 7.

[17] See BT Sanhedrin 73a.

[18] See *Tosafot* to BT Ketubot 33b, s.v. *ilmalei.*

[19] See Ramban to BT Bava Batra 55a; *Magid Mishna* to MT *Hilchot Gezela* 5:13; *Maharik Shoresh* 66; Ritva and *Nimukei Yosef* to BT Nedarim 83; Meiri to BT Bava Kama 113b; and *TaShBeTz* 1:155. Others disagree. Cf. *Tur Choshen Mishpat* 369; *Yam Shel Shlomo, Bava Kama* 10:18.

[20] See Rashba cited by *Bet Yosef* end of *C.M.* 26; *Darkhei Moshe C.M.* 369:3.

[21] See R. Moshe Feinstein, *Iggrot Moshe, Yore Deah* 3:35.

[22] See BT Yoma 83a; *Shulchan Aruch Orach Chayim* 328:17; and *Mishna Berurah* 50 and 52 *ad loc.*

[23] See BT Sukka 25a ff.; *Shulchan Aruch O.C.* 440:3,4.

[24] See *Teshuvot Rashba Hameyuhasot l'Ramban*, #127, where gradations of different rabbinic laws are analyzed in relation to their violation for the sake of a moderately ill person. Cf. *Magen Avraham* 307:6. See Jakobovits, 87-92 for a list of exemptions regarding prayer, mourning, kashrut, and exemptions due to physical disabilities. See also Rabbi M.D. Tendler and Dr. Fred Rosner, "Dental Emergencies on The Sabbath, "*Journal of Halacha and Contemporary Society* XIV, on line at http://www.jlaw.com/Articles/dental-emerg.html.

[25] See *Shulchan Aruch O.C.* 328:17 with gloss of Rema.

[26] See *Shulchan Aruch O.C.* 328:33, Rema to 337:1.

[27] See *Teshuvot Havvot Yair*, #164; *Birkeo Yosef OC.* 38:6, and 472:10.

[28] See BT Sanhedrin 7a.

[29] See BT Yoma 84b; *Shulchan Aruch O.C.* 328:9; and 10. Cf. *Midrash Tehillim* 146:8. There is no greater affliction or torment than blindness.

[30] See BT Avodah Zarah 28b. The text mistakenly refers to the connection to the heart as the seat of mental faculties.

[31] See comments of Rabbi BAruch Halevi Epstein, *Torah Temimah* #145 to Exodus 21:19.

[32] See BT Shabbat 32a; *Mishneh Torah Hilchot Rotzeach U-Shmirat Nefesh* 11:4-5; and *Shulchan Aruch Yore Deah* 116.

[33] See BT Shabbat 129b; BT Yevamot 12b; and BT Niddah 31a. Risks ignored by most people are acceptable based on Psalms 116:6–"God preserves the simple."

[34] See *MT Hilkhot De'ot* 4:1.

[35] See *Pri Megadim, Orach Chaim* 4, *Ashel Avraham*, no. 2.

[36] See Rashi, BT Chulin 10a, s.v. *v'ein*; *Tosafot*, BT Pesachim 115b, s.v. *kappa*.

[37] See Radbaz to *Hilkhot Sanhedrin* 18:6; *Responsa Radbaz* no. 728; and III, no. 527.

[38] See Deuteronomy 4:15.

[39] See *Responsa Ho'il Moshe*, (NY, 1895) No. 16.

[40] See the discussion regarding blood-letting, BT Shabbat 129b. Cf. BT B'rachot 54b and BT Avodah Zarah 30b.

[41] See Rabbi J. David Bleich, "Hazardous Medical Procedures" *Tradition* 37:3 (Fall, 2003), 76-100 for a fuller treatment of this subject.

[42] See BT B'rachot 54b.

[43] See Rabbi Jacob Ettlinger, *Responsa Binyan Zion* (Altona, 1868) #137.

[44] See *Assia* (Kislev 5744) 37:5,17,21; Rabbi Moshe Feinstein *Igrot Moshe, Yore Deah* 2:49; *Choshen Mishpat* 2:66; Rabbi Ovadia Yosef, *Y'haveh Da'at* 5:39; and Rabbi Eliezer Waldenberg, *Zitz Eliezer* 15:39.

[45] See Bleich, 84-85.

[46] See BT Eiruvin 54a.

[47] See Rabbi I.J. Unterman *Noam* 13:3ff., and M.D. Wollner, "*The Physician's Rights and Qualifications*" *HaTorah V'HaMedinah* (5716-17) Vols. 7-8, 319f.

[48] See Bleich, 96.

[49] See Rabbi Yehoshua Neuwirth, *Shmirat Shabbat Ke-hilchata*, (Jerusalem, 1969) 32:150 and in Rabbi Abraham S. Abraham, *Nishmat Avraham* (New York, 2000) Vol. 1 *Orach Chaim* 19:4(B).

[50] See *B'reishit Rabbah* 10:6; and Ben Sira 38:4.