Physicians' Strikes And Jewish Law

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Introduction

In 1975, writing about the immorality of a strike by resident physicians (housestaff) in New York City, I pointed out that "for a physician to strike, for whatever reason, is unconscionable and totally contrary to every standard of medical ethics and morality." Although sympathetic to the demands of the housestaff, I argued that to leave patients without direct medical assistance and attendance put the striking physicians in an untenable moral position.

In 1983, a lengthy strike by physicians took place in Israel which ended only after both sides agreed to submit disagreements on salaries and other unresolved issues to binding arbitration. Since many of the striking physicians


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were Torah-observant Jews, they turned to rabbinic authorities for guidance on this matter. The rabbis were unanimous in their condemnation of physicians who withheld their services from patients by striking. The Jewish legal reasoning upon which this halachic ruling is based is the substance of this essay. A brief review of the physician's religious license and obligation to heal and physicians' fees is also presented as background for the rabbinic ruling which follow.

Physicians' license and obligation to heal

One could argue that since a person becomes sick only through Divine Providence, it might be forbidden to try to oppose "G-d's will" by seeking therapy. However, the biblical verse "and heal he shall heal" is interpreted by the talmudic sages to mean that authorization is granted by G-d to the human physician to heal. In Jewish law, a physician is not merely allowed to practice medicine but is in fact commanded to do so if he has trained to become a physician.

This biblical mandate is based upon two scriptural precepts: "And thou shalt restore it to him" refers to the restoration of the lost property. In his Commentary on the Mishnah, Rambam states that "it is obligatory from the Torah for the physician to heal the sick, and this is included in the explanation of the scriptural phrase 'and though shalt restore it to him."

Thus, Maimonides, following the Talmud, states that the law of restoring lost property includes also

the restoration of health. If a person has "lost his health" and the physician is able to restore it, he is obligated to do so.

The second scriptural mandate for the physician to heal is based on the phrase "neither shalt thou stand idly by the blood of thy neighbor." The passage refers to the duties of human beings to their fellow men: One may not stand by and allow a fellow man to die without offering help. A physician who refuses to heal, thereby resulting in suffering and/or death of the patient, is also guilty of transgressing this commandment.

Some scholars, notably Maimonides, claim that healing the sick is not only allowed by Jewish law but is actually obligatory. Rabbi Joseph Karo, in his Code of Jewish Law, combines both thoughts:

The Torah gave permission to the physician to heal; moreover, this is a religious precept and it is included in the category of saving life; and if he withholding his services, it is considered as shedding blood.

If one asks why G-d granted physicians license and even mandate to heal the sick, one can offer the following explanation. A cardinal principle of Judaism is that human life is of infinite value, as is evident in the fact that preservation of human life takes precedence over all commandments in the Bible except three: idolatry, murder, and forbidden sexual relations. In order to preserve a human life, the Sabbath and even the Day of Atonement may be desecrated, and all other rules and laws save the aforementioned three are suspended for the overriding

consideration of saving a human life. A person who saves one life is "as if he saved a whole world." This obligation to save lives, moreover, is an individual as well as a communal obligation. Certainly a physician, who has knowledge and expertise far beyond that of a layperson, is obligated to use his medical skills to heal the sick and thereby preserve and prolong life.

Physicians' Compensation and Fees

The biblical verse "and heal he shall heal" actually relates to compensation for medical expenses arising from personal injuries; it is usually translated "he shall cause him to be thoroughly healed." This is an obvious reference to the payment of medical expenses by one who inflicts an injury on his neighbor. Healing expenses are one of five items of compensation due by law to an injured party. (A more detailed analysis of physicians' fees is provided elsewhere.) Briefly summarized, the physician is entitled to reasonable fees and compensation for his services. In talmudic times, when physicians, rabbis, teachers and judges served the community but also had other occupations and trades, their compensation was limited to lost time and effort. Nowadays, however, when physicians have no other occupation, they can charge for their expert medical knowledge and receive full compensation.

Excessive fees are discouraged but not prohibited if the patient agrees to the fees in advance. Indigent patients, however, should be treated for reduced or no fees at all.

Physicians' Strikes and Jewish Law

The Israeli physicians' strike of 1983 led to a series of rabbinic pronouncements on the impropriety and illegality of the strikes. The strike took place in stages. At first, physicians reported for duty as usual at government hospitals but charged fees for patients who sought care at hospital clinics. Stage two was a partial strike of doctors at hospitals and the establishment by physicians of their own clinics where they treated patients on a fee-for-service basis. Stage three was the refusal of nearly all physicians throughout the country (except for military doctors) to report for duty at government hospitals and clinics. Doctors simply went on vacation or did not appear. This went on for three days at which time partial services were resorted (stage four). The fifth stage consisted of a hunger strike by physicians, beginning at Soroka hospital in Beersheba and spreading to most hospitals throughout the country. The final stage was the continued hunger strike as the parties were agreeing to submit the dispute to binding arbitration. This stage lasted less than two days.

On the day that the main strike of stage three began (May 22, 1983), a rabbinic ruling by Rabbis Yitzchok Yaakov Weiss and Shlomo Zalman Auerbach was widely publicized throughout Shaare Zedek hospital and elsewhere in Israel. In a letter addressed "to the hospital administration and its physicians," the rabbis wrote:

We have heard that there are doctors who have abandoned their work in the hospital and have forsaken their patients. The situation is such that the

number of physicians available in the hospital is even less than usually present on the Holy Sabbath. Assuming that the latter is the minimum needed for the saving of life which is permissible on the Sabbath, the halacha is clearly spelled out in the Shulchan Aruch (Yoreh Deah 336:1): "a physician who withholds himself from healing is guilty of shedding blood."

Therefore, the obligation is upon you to assure the presence of an adequate medical staff in the hospital no less than on a regular Sabbath. All the physicians are obligated to fulfill the aforementioned. We ask that this ruling of ours be transmitted to all the physicians in the hospital.13

This rabbinic ruling was not issued in the early stages of the strike but only with regard to stage three, which involved possible immediate danger to patients' lives. About a month later, the hunger strike began. Physical weakness of the physicians, and thus their compromised ability to care properly for patients, became the next Jewish legal question.

In a letter dated 8 Tammuz 5743 addressed to Professor Rosen, Administrator of Shaare Zedek Hospital, Rabbis Weiss and Auerbach wrote:

We heard that there are physicians whose view is to go on a hunger strike. We hereby inform you that, according to the Torah, no man is allowed to do any act which might lead to human harm, such as a partial hunger strike which is being spoken of for a long time period, all because of [the demand for] increased wages. It is written: "it is prohibited for a person to wound either himself or his fellow man." (Rambam, Chovel Umazik 8:1).

13. Ibid.
Certainly, any physician who does so and weakens himself so that he cannot function and heal properly—in addition to the above—needs to consider the following law: "A physician who withholds himself from healing is guilty of shedding blood" (Shulchan Aruch, Yoreh Deah 336). The obligation not to withhold oneself from healing is valid even if the physician is pressured [to act] because his colleagues are doing so contrary to halacha. We ask that this ruling of ours be transmitted to all the physicians in the hospital.

Nearly all physicians at Shaare Zedek hospital followed rabbinic rulings and reported for duty. They sent a telegram to their national medical organization, which was negotiating the disputed issued with the government, expressing their anguish over the prolonged red tape in trying to resolve the issue. The physicians called for binding arbitration and stated that they, including the hunger fasters, would continue to care for patients who presented to their hospital in need of urgent medical attention.

During the last stage of the strike, a rabbinic ruling was issued by the two Chief Rabbis of Israel, Abraham Kahana Shapira and Mordechai Eliyahu, as follows:

To the request of the physicians who turned to the Chief Rabbis of Israel to learn the ruling of halacha in regard to the physicians' strike, we ruled that if their demand was to settle the dispute by binding arbitration, they were justified in their interruption of medical services to certain patients. However, since the parties have now agreed to settle the financial issues by binding arbitration, it is strictly forbidden for the physicians to cease medical treatment to patients who need their help, and the aforementioned permissive ruling is not valid.

Therefore, all the physicians are obligated to stop the
strike, including the hunger strike, and to return to work immediately so that they not violate the negative precept, "Thou shalt not stand idly by the blood of thy fellow man..."

Halperin interprets the Chief Rabbis' ruling to mean that the agreement by the disputants to binding arbitration required the physicians to return to work. Prior to that time, however, the strike may have been permissible. 14

Other rabbis have also voiced their opinions on this issue. Rabbi Yitzchok Zilberstein states that the community is obligated to provide a physician with sufficient income so that he can live comfortably with honor, and is thereby encouraged to care for seriously ill patients. On the other hand, it is strictly forbidden for a physician to refuse to care for such patients, even if he is dealt with deceitfully in regard to his wages. No one would ever dream that a worker deprived of his wages would be justified in refusing to put on phylacteries or not returning a lost object or eating pork. Similarly, no one would dream that a physician who is biblically commanded to heal may refuse to do so. 15

Rabbi Moshe Halevi Steinberg states that since a Jewish physician is obligated to heal the sick, it is illogical to suggest that he should be allowed to strike for financial reasons. A physician may not set aside this biblical commandment. They may certainly ask for equitable and appropriate wages in fees, but financial demands cannot ever sanction a strike which might endanger lives. 16

14. Ibid.
The most extensive rabbinic discussion of the Israeli physicians' strike is presented by former Chief Rabbi Shlomo Goren. Rabbi Goren does not object to the first stages of the strike, when doctors established their own clinics and charged patients a fee for each service. However, he prohibits striking physicians from refusing to provide care to hospitalized patients and considers such refusal to be a violation of both the positive biblical commandment to "restore a lost object" (i.e., the patient's health) and the negative biblical precept against "standing idly by the blood of one's fellow man." Therefore, Rabbi Goren instructed the physicians to return to their duty stations and not to withhold their services either in the hospital or in the out-patient clinics. On the other hand, Rabbi Goren firmly states that physicians are entitled to specify the salaries they expect to obtain from their hospitals and/or the government in exchange for their returning to work. According to Jewish law, physicians are allowed to establish their own level of compensation and the government is obligated to honor and agree to that request.

Unfortunately, as pointed out by Rabbi J. David Bleich, the striking physicians had no reason to believe that their employer, the Israeli government, would abide by the provisions of Jewish law in meeting their demands for compensation. Rabbi Bleich also qualifies Rabbi Goren's statement that if the physician stipulates his fee in advance,


he may compel payment in full. This halachic principle applies only if there are other equally competent physicians available. If no other physician equally competent to treat the illness is available, concludes Bleich, the doctor cannot collect the stipulated fee if it is exorbitant. 19

Obviously, where potential danger to life may occur by physicians' withholding their medical services, all rabbis agree that the physicians are halachically obligated to provide those services, even at great personal financial loss. Rabbi Bleich quotes a latter-day authority, Rabbi Yehudah Leib Zirelson, Responsa Atzei ha-Levanon no. 61, who argues that the physician's obligation to heal applies under non-life-threatening circumstances no differently than in life-threatening situations.

It is not clear whether the striking physicians were under contract with their employers and, if so, whether the contract contained a "no-strike" clause. It is also not clear whether such a clause, if present, could be legally enforced. In halacha, it may not make a difference. Jewish law grants workers the right to abrogate labor contracts unilaterally, although under certain circumstances the workers may have to pay for damages or financial losses resulting from their actions. 20 Physicians, however, are figuratively under contract with G-d because of their biblical mandate to heal. Hence, the presence or absence of a contract between physicians and their employers seems irrelevant. Physicians are not allowed to strike, since by doing so they are refusing to fulfill the biblical injunctions of "heal he shall heal" and "thou shalt restore it to him." Striking physicians may also be violating the negative precept "Thou shalt not stand idly by the blood

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19. Teshuvot Radbaz, Part 3 #556.
20. Shulchan Aruch, Choshen Mishpat 133:3.
of thy fellow man."

Does that mean that physicians are obligated always to be available for their patients? Are vacations not permitted? Even assuming that other equally competent physicians are available, some patients may insist on their own physician in whom they have more faith, trust, and confidence. The Talmud declares that "not by every person is an individual privileged to be cured." According to Jewish law, a physician is permitted to travel on the Sabbath in order to treat a patient who specifically asks for him, even if another physician is locally available who need not desecrate the Sabbath. Yet physicians must be allowed, within the boundaries of halacha, to devote some of their time to rest and relaxation, to continuing medical education, to their families, and to other non-medical interests and pursuits. This question requires additional deliberation and consultation with competent rabbinic authorities.

Summary and conclusion.

A cardinal principle of Judaism is that human life is of infinite value. In order to preserve a human life, the Sabbath and even the Day of Atonement may be desecrated, and most other rules and laws are suspended. As noted, this obligation to save lives is an individual as well as a communal obligation. Certainly a physician, who has knowledge and expertise far beyond that of a layperson, is obligated to use his medical skills to heal the sick.

In the context of a nation-wide refusal of doctors in Israel to practice their medical profession, it was the overwhelming consensus of rabbinic opinion that it is illegal and immoral for physicians to refuse to report for duty or to deny their

healing skills to patients who need them, financial considerations notwithstanding. Physicians are entitled to receive appropriate compensation for their work and their employers, governmental or otherwise, are obligated to provide them with appropriate wages and fringe benefits. Physical weakness induced by fasting compromises physicians' ability to properly discharge their duties. Hence, hunger strikes by physicians are also prohibited.

It still remains to be clarified what steps would be sanctioned by Jewish law to enable physicians to receive the compensation they consider appropriate, when confronted by a recalcitrant governmental employer.