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*Eat, Drink, and be Merry,
for Tomorrow We Die...
Is there an Obligation to
Maintain Good Health?*

There is a general perception that Halakhah obligates people to maintain their health. However, this contention is rarely sufficiently sourced, and when sources are cited, they are often misrepresented. We will attempt to assess the basic sources and the obligations that do and do not emerge from them.

*Ve-Rapo Yerape*¹

The first possible source is derived from the laws pertaining to bodily damages. The Torah rules that one who injures his fellow is obligated to compensate him for the damage incurred. The *mishnah* and *gemara* at the beginning of the eighth chapter of *Bava Kama* outline how the damages are assessed on the basis of five criteria: *nezek*, the physical damage as determined by the loss of the injured party's value on the slave

1 For a fascinating philosophical discussion of this law and its modern expressions, see Howard and Avi Apfel, "Verapo Yerape: Diverse Approaches to the License to Heal," *Verapo Yerape* 1 (2009): 21-37; and Howard Apfel, "Verapo Yerape Part II: Uncovering a Latent Hashkafic Divide," *Verapo Yerape* 2 (2010):1-14.

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market;² *tza'ar*, the pain incurred from the wound; *ripui*, the medical expenses; *shevet*, the loss caused by the inability of the injured person to work; and *boshet*, the embarrassment caused. From the Torah's phraseology regarding the obligation to pay for medical expenses, "*ve-rapo yerape*," "and he shall cause him to be thoroughly healed,"³ the Talmud concludes, "*Mi-kan she-nitenah reshut le-rofeh le-rapot*," "from here we derive that a doctor has permission/authority⁴ to heal."⁵

Elsewhere, the Talmud records the following dispute:

R. Aha said: When going in for blood-letting, one should say, "May it be Your will, O Lord, my God, that this operation may be a cure for me, and may You heal me, for You are a faithful healing God, and Your healing is true, since it is not the way of men to heal, but this is a common practice." Abaye said: A man should not speak in this manner, for it was taught in the school of R. Yishmael: [It is written:] "He shall cause him to be thoroughly healed (*ve-rapo yerape*)." From here we learn that permission/authority was given to a doctor to heal. When he gets up [after blood-letting], what does he say? R. Aha says: "Blessed be He who heals without payment."⁶

2 The *Rishonim* discuss whether this payment is considered pure compensation or a fine – see, for example, Rambam and Ra'avad, *Hilkhot Hovel U-Mazik* 5:6, and the commentaries there – as well as whether the slave market used is the that of *eved kenani* or *eved ivri* – see Rashi, *Bava Kama* 83b, s.v. *ha-hovel* and Rosh, *Bava Kama* 8:1.

3 *Shemot* 21:19.

4 The valence between these two Talmudic formulations may be different, and the legal implications discussed below may be in part functions of these two possible understandings.

5 *Bava Kama* 85a-b.

6 *Berakhot* 60a. Translation taken, with some changes, from R. Dr. Beni Gesundheit, "Permission Given to a Doctor to Heal – Across the Genera-

The halakhic codes rule in accordance with Abaye's position, which endorses R. Yishmael's formulation of "*mi-kan she-nitnah reshut le-rofeh le-rapot.*"⁷

A strict interpretation of this phrase provides a dispensation for doctors to provide medical treatment, but little more; it cannot create an obligation for doctors to treat patients or for patients to seek treatment. Indeed, the context of the passage in *Berakhot* implies that the exegetical derivation was needed to provide dispensations for human beings to engage in medical treatment, an activity that would logically be left to God.

Several commentators explain what generated the original assumption that medical treatment should be prohibited. Rashi,⁸ Tosafot,⁹ and Ramban¹⁰ suggest that since illness is caused by God, any attempt to alleviate sickness could be seen as an attempt to undermine God's will.¹¹ In a similar vein, Rabbi Avraham Gombiner, the author of *Magen Avraham*, in

tions and in the Thought of Rav Avraham Ha-Kohen Kook," *Verapo Yerape* 2 (2010): 55.

7 Ramban, *Hilkhot Berakhot* 10:21; *Tur, Orah Hayim* 230; and *Shulhan Arukh, Orah Hayim* 230:4. For suggestions that this position of R. Yishmael should be understood in light of his general positions about the relationship between human effort and divine intervention, see *Teshuvot Yabel Yisrael* 49, 51, and the citation of *Kehilat Yaakov* therein.

8 Rashi, *Bava Kama* 85a, s.v. *nitnah*.

9 Tosafot, *Bava Kama* 85a, s.v. *she-nitnah*. See also *Tosafot Ha-Rosh* and *Tosafot Rabbi Yehudah Ha-Hasid, Berakhot* 60a; *She'arim Ha-Metzuyanim Be-Halakhah, Bava Kama* 85a, s.v. *ve-rapo*, *Bava Kama* 85b, s.v. *mi-kan*, and *Berakhot* 60a, s.v. *mi-kan*.

10 Ramban, *Torat Ha-Adam, Sha'ar Ha-Sakanah* 6, the second answer, and commentary to *Vayikra* 26:11.

11 See also *Tur, Yoreh Deah* 336, who cites both this reason, as well the reason of Ramban below. See also *Hiddushei Ha-Rashba, Bava Kama* 85a, s.v. *ve-rapo*, for a similar formulation. See also *Midrash Shemuel* 4:1. For a summary of many of these sources, see *She'arim Ha-Metzuyanim Be-Halakhah, Bava Kama* 85a, s.v. *ve-rapo*.

R. Yisrael Meir Lau points out that if one maintains that it would be prohibited to get medical treatment were it not for a special dispensation, then one must wonder whether non-Jews are permitted to seek medical treatment, as they may not be within the rubric of the verse. See *Teshuvot Yabel Yisrael* 50.

his *Sefer Zayit Raanan*, his commentary on the *Mekhilta*, proposes that while doctors are logically permitted to treat patients initially, after treatment fails, a verse is required to teach that they may continue to treat the patient; failure of treatment is not an indication that God desires the ill person to remain ill.¹² R. Hayim, one of the Tosafists, propounds a parallel explanation, suggesting that the verse teaches that many doctors can attempt to treat the patient, not just one.¹³ Ibn Ezra¹⁴ and Rabbenu Bahya¹⁵ submit that in truth, doctors *are* prohibited from treating internal wounds; only external wounds are considered legitimately subject to human intervention.¹⁶ In his commentary on the Torah, Ramban further suggests that the novelty of the verse is that one is permitted/obligated to attempt performing surgery even if the surgery could possibly kill the patient, making the doctor an inadvertent killer.¹⁷ R. Abraham Isaac Kook, in a fascinating explanation, argues that the Torah needed to allow doctors to act in accordance with the medical knowledge available to them, even though medical knowledge is subject to change.¹⁸

According to all of these sources, a narrow read of “*verapo yerape*” could generate a mere dispensation for doctors to treat their patients. The implications of this narrow read are

12 See *Sefer Zayit Raanan* on *Mekhilta De-Rabbi Yishmael, Mishpatim*, end of chapter 6. See also *Teshuvot Yabel Yisrael* 49.

13 *Moshav Zekenim, Shemot* 21:19.

14 Ibn Ezra, *Peirush Ha-Arokh, Shemot* 21:19.

15 Rabbenu Bahya, *Shemot* 21:19.

16 For a convincing rejection of this position, see *She'arim Ha-Metzuyanim Be-Halakhah*, supra n.11. For possible distinctions between physical and mental illness, see Gesundheit, “Permission Given,” 65-66, based on Malbim and R. Samson Rafael Hirsch. Tosafot, supra n.9, suggests and rejects the possibility that only humanly caused injuries are permitted to be healed, but not natural ones.

17 Ramban, *Shemot* 21:19, first answer. See also *Tur, Yoreh Deah* 336 and *Moshav Zekenim*, n. 13 above. It seems more likely that Ramban means that there is permission to do so, but it is unclear if there is also an implied obligation.

18 *Teshuvot Da'at Kohen* 140.

further seen in the hesitance of many authorities to permit righteous people to seek medical attention.¹⁹

Most authorities, however, offer more expansive reads of this source. In his *Torah Ha-Adam*, Ramban rules that there is a *mitzvah* for doctors to heal patients,²⁰ and *Tur* and R. Yosef Karo argue similarly.²¹ These sources, taken minimally, may only obligate a doctor to treat patients who approach him, but would not obligate patients to initiate such treatment. This understanding is supported by the context in *Tur*, where the laws discussed are directed towards doctors. This may explain why Ramban defines providing medical treatment as a *mitzvah*, while in his commentary on the Torah, he argues that for righteous people, reliance on doctors may be a indication of weak faith.²²

Many commentaries, however, assume that the *mitzvah* for doctors to provide treatment implies a reciprocal obligation for people to pursue medical attention. *Taz*,²³ *Birkei Yosef*,²⁴ and R. Asher Weiss²⁵ argue that this is the intent of Ramban, although this point is conspicuous in its absence is Ramban's comments themselves.²⁶ They understand Ramban as arguing that in practice there is an obligation to seek medical attention, and turning to God instead is a theoretical, but not implementable, ideal.²⁷

19 See Ibn Ezra, n.14 above; Ramban and R. Bahya, *Vayikra* 21:19. See *Teshuvot Yahel Yisrael* 51 for a discussion of Ramban's view. For an interesting rejection of this sentiment, see *Iggerot Moshe, Orah Hayim* 2:111 regarding why it is permitted to buy insurance.

20 *Torat Ha-Adam, Sha'ar Ha-Sakanah* 6. See also *Bah, Yoreh De'ah* 336:1.

21 *Tur, Yoreh De'ah* 336:1; *Beit Yosef* ad loc., s.v. *tana*. In *Shulhan Arukh*, *ibid.*, this is less clear.

22 *Vayikra* 26:11. Ramban bases this view on *Divrei Ha-Yamim* 2 16:12, which criticizes King Hizkiah for turning to doctors and not God.

23 *Taz, Yoreh De'ah* 336:1.

24 *Birkei Yosef, Yoreh De'ah* 336:1.

25 *Minhat Asher, Vayikra* 66.

26 Personally, I find this understanding not to be compelling, and in personal conversation, R. Mordechai Willig agreed.

27 In contrast, see the view of the father of *Amei Nezer* in *Teshuvot Avnei*

While this understanding of Ramban is difficult, it seems to be an accurate understanding of Rashba's, the student of Ramban, view. In a responsum regarding *segulot* and other "alternative medical treatments," he writes that the *mitzvah* of *ve-rapo yerape* obligates one to seek medical help, *segulot*, or any other means within the scope of human effort that can heal him, rather than rely blindly on God.²⁸

This position is taken further by R. Yaakov Emden, who argues that when one has been wounded externally to the point that life is in danger, he must seek medical attention, and if he does not, he can be coerced to do so.²⁹ This comment is partially responsible for the position of many modern authorities that Halakhah does not require informed consent to perform medical procedures, as patients have no right to turn down medical treatment.³⁰

However, even the most expansive construal of this source only generates an obligation to seek medical attention

Nezer, Hoshen Mishpat 193, where he rules that it is preferable not to seek medical treatment, basing himself on Ramban and Ibn Ezra.

28 See *Teshuvot Ha-Rashba* 413, as well as the two responsa that follow. See *Minhat Asher, Vayikra* 66 regarding the halakhic status of alternative medicine, based on the first of these responsa.

An alternative reading of this source was suggested by R. Aryeh Klapper, who suggests that according to Rashba, the permission to heal is based on "*ve-rapo yerape*" but the obligation to seek healing is based on some other source that he does not mention explicitly. I am not sure what this source might be, so I will assume that it is most likely that *ve-rapo yerape* is the source.

29 *Mor U-Ketziah* 328. He bases himself on a passage in *Magen Avraham, Orah Hayim* 328:6, which he believes to be based on a passage in *Teshuvot Ha-Radbaz* 4:66. This seems to be based on a misattribution error, however, as the passage from Radbaz cited by *Magen Avraham* seems to be used to support a different ruling. Much thanks to R. Aryeh Klapper for this insight. See also *Mishnah Berurah* 328:25 and *Biur Halakhah* 328, s.v. *ve-rofeh*, who understood the *Magen Avraham* and Radbaz differently than *Mor U-Ketziah*.

30 See, for example, Dr. Avraham Steinberg, "Informed Consent: Ethical and Halakhic Considerations," *The Jewish Law Annual Volume* 7 (1998): 138-52, especially 147-8, and idem., *Encyclopedia of Jewish Medical Ethics*, trans. Fred Rosner (Jerusalem, 2003), 554-60.

when one's life is in danger. Although one could suggest that the case presented in the Talmud is more expansive, as people who damage others in non-life threatening ways are obligated to compensate for medical expenses, the classical sources do not extend the obligation to non-life saving measures.

Ve-Hai Bahem/ Pikuah Nefesh

The most straightforward source for the obligation to seek medical help in life-threatening situations is the general obligation to maximize one's longevity, a principle so basic that it overrides all other commandments with the exception of the three cardinal sins.³¹ Although *Tur* and R. Yosef Karo also cite "*ve-rapo yerape*," both assume that the obligation fundamentally stems from *pikuah nefesh*.³² They reference the classical discussions of the obligation to save human life, including the rule that it overrides Shabbat, and explicitly use the rhetoric from those discussions.³³ While R. Karo only explicitly derives an obligation for doctors to provide life-saving treatment, calling any doctor who denies such treatment a "blood shedder," this obligation logically applies reciprocally to the patient as well.³⁴ This obligation is also linked to the prohibition against

31 This is the commonly accepted view, although some maintain that there are additional cardinal sins. See for example *Ketubot* 19a with Ramban.

32 *Tur*, *Yoreh De'ah* 336:1; *Beit Yosef* ad loc.; *Shulhan Arukh*, *Yoreh Deah* 336:1.

33 Ibid., citing discussions in *Yoma* 84b-85a. See also *Yimei Shelomo*, *Hilkhot Issurei Biah* 21:31.

34 See Rambam, *Hilbot Yesodei Ha-Torah* 5; *Shulhan Arukh*, *Orah Hayim* 328 and *Yoreh De'ah* 157. I would suggest that this is the simplest understanding of these sources. However, it is possible that there is a specific prohibition against giving up one's life in circumstances when God commanded not to. The parameters of that *halakhah* is also subject to a dispute among the medieval decisors. See my article, "*Bi-Inyan Ya'avor Ve-Al Yehareg*," *Beit Yitzhak* 41 (2010), 495-500, regarding the position of Rambam and the implications for the understanding I have suggested in the body of this text. See also *Seridei Eish* 2:35.

suicide.³⁵ This source, while it provides a clear responsibility on the patient, is limited to life threatening situations.

Rak Heshamer Lekha... Ve-Neshmartem Me'od Le-Nafshotekhem

Two verses in *Devarim* constitute the most popularly cited source for the obligation to maintain one's health. The simple meaning of these verses has nothing to do with physical health; rather, Moshe, in describing the revelation at Sinai, warns the Jewish People that they should not create any image of God, as He has no image:

Only take heed to yourself, and keep your soul diligently (*rak heshamer lekha u-shemor nafshekha meod*), lest you forget the things which your eyes saw, and lest they depart from your heart all the days of your life; but make them known to your children and your children's children – the day that you stood before the Lord your God at Horev... And the Lord spoke unto you out of the midst of the fire; you heard the voice of words, but you saw no form – only a voice. And He declared to you His covenant, which He commanded you to perform, even the ten commandments; and He wrote them upon two tablets of stone. And the Lord commanded me at that time to teach you statutes and ordinances, that you might do them in the land which you go over to possess it. Therefore, **take good heed of yourselves (*ve-nishmartem me'od le-nafshotekhem*)** – for you saw no manner of form on the day that the Lord spoke to you at Horev out of the midst of the fire – lest you deal corruptly and make a

³⁵ See also *Mishneh Halakhot* 13:210. See Rambam, *Hilkhot Evel* 11:1; *Shulkhan Arukh, Yoreh De'ah* 345:1 for consequences of this sin.

graven image, the form of any figure, the likeness of male or female, the likeness of any beast that is on the earth, the likeness of any winged fowl that flies in the heaven, the likeness of anything that creeps on the ground, the likeness of any fish that is in the water under the earth; and lest you lift up your eyes unto heaven, and when you the sun and the moon and the stars, even all the host of heaven, you be drawn away and worship them, and serve them, which the Lord your God has allotted unto all the peoples under the whole heaven.³⁶

As the commentaries point out, the verses taken at face value is a generic warning to remember the Torah that specifically emphasizes the prohibition of creating images that are meant to represent God.³⁷ The verse of “*ve-nishmartem me’od le-nafshotekhem*” is taken by the *mishnah* to warn people not forget what they have learned.³⁸

The interpretation of this verse that derives an obligation to protect one’s health is found in a peculiar passage in the Talmud:

Our Rabbis taught: It is related that once when a certain pious man was praying by the roadside, an officer came by and greeted him and he did not return his greeting. So he waited for him till he had finished his prayer. When he had finished his prayer, he said to him: Fool! Is it not written in your Law: “Only take heed of yourself and keep your soul diligently (*rak*

36 *Devarim* 4:10-19, mildly altered from translation of the Jewish Publication Society (1917).

37 See, for example, Ramban ad loc. and *Hiddushei Maharsha, Berakhot* 32b, s.v. *ketiv*. See also the *Midreshei Halakhah* on this verse.

38 *Pirkei Avot* 3:9.

heshamer lekha u-shemor nafshekha me'od), and it is also written, "Take therefore good heed unto your souls (*ve-nishmartem me'od le-nafshotekhem*)? When I greeted you, why did you not return my greeting? If I had cut off your head with my sword, who would have demanded satisfaction for your blood from me? He replied to him: Be patient and I will explain to you. If you had been standing before an earthly king and your friend had come and given you greeting, would you have returned it? No, he replied. And if you had returned his greeting, what would they have done to you? They would have cut off my head with the sword, he replied. He then said to him: Have we not here then an *a fortiori* argument? If [you would have behaved] in this way when standing before an earthly king, who is here today and tomorrow in the grave, how much more so I when standing before the supreme King of kings, the Holy One, blessed be He, who endures for all eternity?! Forthwith the officer accepted his explanation, and the pious man returned to his home in peace.³⁹

Curiously, the proposition that these verses obligate one to protect his own life is offered by a Roman officer, not a member of the rabbinat. It is in fact unclear whether any member of *Hazal* accepts it.

In another passage, the Talmud claims that cursing oneself is a violation of "*rak hishamer*."⁴⁰ In their opening question, Tosafot seem to understand that this passage endorses the understanding of the Roman officer, but Tosafot's conclusion is less clear.⁴¹ Hatam Sofer challenges the conclusion that an

³⁹ *Berakhot* 32b-33a.

⁴⁰ *Shevuot* 36a.

⁴¹ *Ibid.*, s.v. *u-shemor*. This how R. Shmuel Wosner reads Tosafot, and

obligation to maintain one's health can be derived from this verse.⁴²

Most *Rishonim* are silent regarding their understanding of this passage, but few of them mention this verse as the basis for the obligation. Since many *Rishonim* explicitly refer to other sources, it is plausible that they did not take this interpretation of the verses as authoritative.

However, there are many significant authorities who did accept this source. Among the *Rishonim*, Rambam,⁴³ Rashbash,⁴⁴ and Tashbetz⁴⁵ accept the verse of *ve-neshmartem* as a valid source.⁴⁶ *Peri Megadim* uses this source to explain why it is foolish to avoid violation of Shabbat to save one's life,⁴⁷ and many other *Aharonim* mention it as well.⁴⁸ Among modern *Posekim*, R. Moshe Feinstein cites "*hishamer lekha*" as a possible source for forbidding smoking,⁴⁹ and R. Ovadiah Yosef accepts Rambam's position.⁵⁰ R. Eliezer Yehudah Waldenberg argues forcefully for this position in many of his responsa, as we will

he rules in accordance with this understanding; see *Teshuvot Shevet Ha-Levi* 6:111. See also *Torah Temimah, Devarim* 4:9 note 16; *She'arim Ha-Metzuyanim Be-Halakhah, Berakhot* 32b, s.v. *katuv*; *Mitzpeh Eitan, Mayim Hayim*, and *Hiddushei Rabbi Elazar Meir Horowitz* ad loc. for an analysis of the parameters of Tosafot. The general assumption is that cursing oneself should be forbidden because it is actually life-threatening, and the problem is therefore less extensive than the issues of *havalah* raised by Tosafot.

42 See, for example, *Hiddushei Hatam Sofer, Shevuot* 36a, s.v. *ve-amrinan*. See also R. Yehuda Amital, *Risei Tal* (Alon Shevut, 2005), 268-76.

43 *Hilkhot Rotze'ah U-Shemeriat Ha-Nefesh* 11:4-5.

44 *Teshuvot Rashbash* 1.

45 *Zohar Ha-Rakia, Azharah* 118.

46 See *Torah Temimah, Devarim* 4:9 note 16, who points this out and challenges the view of Maharsha, cited in note 36 above.

47 *Eshel Avraham, Orach Hayim* 328:6.

48 See the famous responsum of *Noda Be-Yehuda, Yoreh Deah* 2:10, who uses this source as one reason people should not hunt. See also *Yimei Shelomo, Hilkhot Issurei Biah* 21:31; *Keter Torah al Minyan Ha-Mitzvot* 6; *Teshuvot Rabaz, Even Ha-Ezer* 2:19.

49 *Iggerot Moshe, Hoshen Mishpat* 2:76.

50 *Yabia Omer*, vol. 1, *Yoreh Deah* 8; vol. 2, *Even Ha-Ezer* 7; *Yehaveh Da'at* 5:39.

see below.⁵¹ In most sources, it seems that the verses are understood to create a biblical obligation. *Levush* is understood by some as treating these verses as an *asmakhta*,⁵² but the accuracy of this interpretation is questionable.⁵³

What are the parameters of the obligation generated by these verses? After discussing the obligation to build a *ma'akeh*, a parapet on one's roof to prevent anyone from falling, Rambam writes in *Hilkhot Rotze'ah*:

Similarly, it is a positive *mitzvah* to remove any obstacle that could pose a danger to life and to be very careful regarding these matters, as the verse states (Deuteronomy 4:9): "Beware for yourself and guard your soul." If a person leaves a dangerous obstacle and does not remove it, he negates the observance of a positive commandment and violates the negative commandment: "Do not cause blood to be spilled."

Our Sages forbade many matters because they involve a threat to life. Whenever a person transgresses these guidelines, saying: "I will risk my life, what does this matter to others," or, "I am not careful about these things," he should be punished with lashes for rebelliousness.⁵⁴

Rambam goes on to list several formal rabbinic prohibitions that were set up in light of this obligation.⁵⁵ These

51 See *Tzitz Eliezer* 3:16, 8:15, 9:17, 10:25, and others.

52 *Levush Ateret Zahav Yoreh Deah* 116:1; *Tevuat Shor* 13:2; *She'arim Ha-Metzuyanim Be-Halakhah*, n.41 above.

53 See *Levush, Hoshen Mishpat* 426:11 and R. Amital, n.42 above.

54 *Hilkhot Rotze'ah U-Shemirat Ha-Nefesh* 11:4-5. For extensive discussions of this passage and the problems with it, see *Minhat Hinukh* 546.

55 While Rambam explains that these are rabbinic prohibitions, it seems that the basic prohibition is biblical in nature. The nature of the general prohibition is amorphous, however, and the rabbis therefore had to formal-

prohibitions are also listed in *Shulhan Arukh*.⁵⁶

While the *pesukim* in *Devarim* have clearly been adopted as a source prohibiting endangering one's life, it does not seem to obligate people to maintain their general health.

Logic

Rambam opens the fourth chapter of *Hilkhot De'ot* as follows:

Since maintaining a healthy and sound body is among the ways of God – for one cannot understand nor have any knowledge of the Creator if he is ill – therefore, he must avoid that which harms the body and accustom himself to that which is healthful and helps the body become stronger.⁵⁷

ize some expressions of it. For other examples of this structure, see *Hilkhot Avel* 14:1. This understanding is adopted by R. Asher Weiss, *Minhat Asher, Devarim* 7. See, however, *Tzitz Eliezer* 15:39 and R. Amital, n.42 above.

56 *Hoshen Mishpat* 427:9-10; *Yoreh De'ah* 116. David Fried suggested to me that there is a difference between Rambam and *Shulhan Arukh*. The former presents what appears to be an exhaustive list of the rabbinic prohibitions generated by this obligation; anything else might constitute a generic biblical prohibition, but not a formal rabbinic one in addition. In contrast, *Shulhan Arukh*, after listing the obligations, adds “*ve-kayotzei ba-hem*,” “and those like them,” implying that the rabbinic prohibitions listed are only examples; doing anything else that could be dangerous is similarly a formal prohibition on a rabbinic level. While I am not convinced of this reading, the point is worth raising.

57 *Hilkhot Deot* 4:1. For another philosophical perspective on the obligation to maintain optimal health, see R. Avraham Yitzhak Ha-Kohen Kook's celebrated passage on *hitamlut* in *Orot Ha-Kodesh*, 34. For a full discussion of R. Kook's position, see my upcoming article, “R. Kook on *Be-Khol Derakhekha Da'ehu*: Embracing the Totality of Human Experience” in *Gesher*. For further analysis of R. Kook's position, see R. Dr. Beni Gesundheit, “Permission Given to a Doctor to Heal,” 55-96. See also *Tzitz Eliezer* 17:2, including his citations of *Hazon Ish*, who develops a philosophy in which not taking advantage of medical treatment is a rejection of the greatness of God's world.

Rambam argues that serving God requires that people be healthy enough to fulfill their obligations. R. Yisrael Meir Ha-Kohen, known by the title of magnum opus, *Hafetz Hayim*, argues slightly more forcefully that since people are God's slaves, they cannot harm their bodies and hinder their ability to serve God.⁵⁸ These arguments, as opposed to the sources brought above, obligate people to maintain their general health.

Although it might seem that logical argument should not be able to generate obligations of biblical force, the Talmud often argues that if something is self-evident logically, a biblical source is unnecessary.⁵⁹ In some instances, a logical argument

58 *Hafetz Hayim, Likutei Amarim*, 13. For another version of this argument, see *Be'er Ha-Golah, Hoshen Mishpat* 427:90.

The question of whether or not human beings own their own bodies is subject to dispute. See R. Shlomo Yosef Zevin, *Mishpat Shylock Le-Or Ha-Halakhah* (Tel Aviv, 1957), 318-35; R. Shaul Yisraeli, "Takrit Kiviyah Le-Or Ha-Halakhah," *Ha-Torah Ve-Ha-Medinah* 5-6 (1953-1954): 71-113. Dr. Avraham Steinberg believes this is a central question in the Halakhic discussions of informed consent. Lord Immanuel Jacobovits similarly uses the argument that people do not own their bodies as a basis for the obligation to maintain one's health and for the lack of a requirement for informed consent:

In Jewish thought and law, human life enjoys an absolute, intrinsic and infinite value. Man is not the owner of his body but merely its custodian, charged to preserve it from any physical harm and to promote its health where this has been impaired. This principle has both positive and negative applications. It turns healing where necessary into a religious duty, devolving on patient and doctor alike. Conversely, neither patient nor doctor has the right to refuse receiving or rendering such medical aid as is essential for the preservation of life and health. This principle therefore overrides such personal freedoms as may conflict with it, just as the obligation to prevent a suicide (or murder) attempt, by force if necessary, annuls the right of freedom to choose (or inflict).

See Immanuel Jacobovits, "Some Modern Responsa on Medico-Moral Problems," in *Consent in Medicine; Convergence and Divergence in Tradition* (London, 1983), 77-78.

59 See, for example, *Pesahim* 21b; *Ketubot* 22a.

is treated as if it were written in the text itself. For example, the Talmud derives that murder is one of the cardinal sins using the argument “*Mi yiyeimar de-dama didakh sumak tefei, dilma dama di-hu gavra sumak tefei*,” “Who says that your blood is redder; perhaps that person’s blood is redder.” It then compares murder to adultery and derives that adultery must also be a cardinal sin.⁶⁰ Thus, the Talmud applies a *gezirah shavah* to a *sevarah*, as if the latter was written in the text itself.⁶¹ While it is possible that there are different levels of logical arguments, some of which are more powerful and some of which are less, in principle, a *sevarah* is not weaker than *derashah*.⁶²

Nevertheless, it seems that there should be several distinctions between laws built on biblical verses and those derived from logic. First, while there is a dispute in the Talmud as to whether the rationales for *mitzvot* serve as juridical principles (“*darshinan ta’ama de-kra*”),⁶³ it seems obvious that when the basis of a law is logic, the law only applies when the logic holds true.⁶⁴ Accordingly, if there were a *gezerat ha-katuv* that

60 *Sanhedrin* 74a.

61 See the introduction of Mahartz Chajes to the Talmud, 1:14. The place of logic in the adjudication of Torah laws is complex. For a thorough discussion, see Netanel Weiderblank, “*Tafkid Ha-Sevara Be-Keviat Dinim De-Orayta*,” *Beit Yitzhak* 40 (2009), 405-425. Particularly relevant are his citations of *Tosafot Ha-Rosh*, *Bava Kama* 90, s.v. *mahu*, and *Hiddushim Ha-Meyuhasim Le-Ha-Rashba*, *Menahot* 75b, s.v. *pitot*.

62 Presumably, this point would be challenged by R. Elhanan Wasserman, who assumes that the greater number of words allotted to a topic in *Torah She-Bikhtav* provides it with more normative power, thereby explaining why *halkahot* that are *de-orayta* but not written in the Torah have certain leniencies. See *Kuntres Divrei Soferim*, 1.

63 See *Sanhedrin* 21b and *Bava Kama* 115a. The extent of this argument is not clear, nor is the legal conclusion. For a fascinating discussion of the limitations of this dispute, see Weiderblank, n.61 above.

64 Some have argued that in the case of murder, the resulting law supersedes the logic; thus, even if it could be determined that one person’s “blood is redder,” the prohibition would still apply. See, for example, *Kesef Mishnah*, *Hilkhot Yesodei Ha-Torah* 5:5; *Even Ha-Azel*, *Hilkhot Yesodei Ha-Torah* 5:5; *Teshuvot Abiezer*, vol. 2, *Yoreh De’ah* 16. However, this conclusion may be based on the assumption that “*mi yiyeimar*” is not an actual question,

one must be as healthy as possible, then it would be forbidden to do anything that could shorten one's life, even if that action would allow the person to learn more Torah or serve God with more energy. However, if the obligation is to maximize one's ability to serve God, physical health could be sacrificed in favor of peace of mind that would enable proper worship. Presumably, this would have limits, as a wholly unhealthy person is incapable of engaging in the full regiment of *avodat Hashem*. Thus, I would argue that the obligation derived from logic should be formulated as an obligation to live a healthy lifestyle, rather than a prohibition to do things that are not maximally healthy. For example, it might obligate one to maintain a generally healthy diet, but not forbid him from eating a specific unhealthy item.

A second possible distinction relates to the question of coercion. As mentioned above, R. Yaakov Emden maintained that people can be forced to undergo life-saving operations on the basis of "*ve-rapo yerape*." Indeed, in general, one can be forced to perform positive commandments.⁶⁵ Can one be forced to keep a commandment that is derived from logic? I believe that there are three reasons that this is impossible. The first is practical – if it is true that logical commandments are more malleable because they only pertain when the logic holds true, then it is nearly impossible for an outsider to conclusively argue that the law is being violated. Second, the obligation seems

but an ontological statement of value or a rhetorical question; it is logically impossible for people to determine the value of other people, and we are therefore by definition constrained from making judgment calls about the comparative value of life. (Rashi, in contrast, does not appear to read the *gemara* this way.) Regardless, there are many other examples of logical deductions in which the resulting law would clearly only apply in cases in which the logic applies. Examples include the logic of *migo*, which is limited in circumstances in which litigants are likely to lie, and *ha-motzi mei-havero*, which is not applied in circumstances in which it is likely that the *motzi* is the original owner (such as in cases on *hazakah*).

65 See, for example, *Hullin* 110b. See also *Ketzot Ha-Hoshen* and *Netivot Ha-Mishpat*, *Hoshen Mishpat* 3, for discussion of whether this is a function of the courts or not.

to prescribe a lifestyle, while any given act of eating unhealthy food is not a formal prohibition. Third, on a fundamental level, it seems that coercion is a function of formal commandments and does not apply to all commandments. While logic may be binding, it is less formal and may not be subject to coercion the way some formal commandments are.⁶⁶

Combinations

While Rambam appears to distinguish between the obligation to avoid danger – based on “*hishamer lekha*” – and the obligation to maintain one’s health – based on logic – some *Aharonim* do not draw this distinction. For example, *Kitzur Shulhan Arukh* cites the passage from *Hilkhot De’ot* in the beginning of one *halakhah*, but justifies it with “*ve-neshmartem*,” thus ascribing the force of a biblical verse to that which Rambam derived from logic.⁶⁷ Similarly, R. Yisrael Meir Ha-Kohen combines three sources for the prohibition to smoke – the logical argument that one cannot serve God when he is unhealthy, the verse of “*ve-neshmartem*,” and the prohibition of *havalah*, harming oneself.⁶⁸ *Sefer Issur Ve-Heter* similarly combines *se-*

66 It seems that coercion is limited to a class of commandments termed “*mitzvot aseï she-ein matan sekharah bi-tzidah*,” commands whose reward is not explicit in the Torah; see *Ketzot Ha-Hoshen* and *Netivot Ha-Mishpat*, *ibid*. Commandments that are derived from logic, whatever their status may be, are certainly not in this category. See *Kuntres Divrei Soferim*, 1, for his assessment of what distinguishes *mitzvot aseï ha-ketuvim ba-Torah* and *Halakhah Le-Moshe Mi-Sinai*, who is clearly working with a parallel structure.

67 *Kitzur Shulhan Arukh* 32:1.

68 *Sefer Likkutei Halakhot* 13. The Talmud, *Bava Kama* 90b-91b, disputes whether there is a prohibition to damage oneself. While Rambam (*Hilkhot Rotze’ah* 5) and *Shulhan Arukh* (*Hoshen Mishpat* 420:1) maintain that the prohibition exists, this view is challenged by *Tur* (*Hoshen Mishpat* 420), citing Ramah, and *Shitah Mekubetzet* (*Bava Kama* 91a, s.v. *Rav Hisda*). *Havot Yair* 163 seems to imply that the basis of the prohibition to damage oneself is the verse of “*ve-nishmartem*,” but this seems to be a typographical error, as the verse cited is “*u-shemartem le-nafshotekhem*,” which does not exist.

Because this source for the obligation to maintain one’s health is not cited by other classical sources, I have not discussed it at length and have sufficed with a passing reference. See, however, *Tosafot*, *Shevuot* 36a, s.v. *u-shemor*,

vara, the prohibition of suicide, and the obligation of “*ve-hai ba-hem*” as the sources for the obligation to maintain one’s health.⁶⁹

R. Eliezer Yehudah Waldenberg was asked many halakhic questions related to medical practice in his role as rabbi of Shaare Zedek Medical Center in Jerusalem. Throughout his responsa, he uses many halakhic and rhetorical arguments in favor of the obligation to maintain health. For example, R. Waldenberg was asked whether children should be forced en masse to receive eye exams.⁷⁰ Throughout his responsum, he cites the logical argument of Rambam as well as some of the biblical sources cited above, which he builds on in many other responsa to establish that it is an obligation to ensure that one’s eyes are healthy. He then argues that R. Yaakov Emden’s position that people can be coerced to accept life-saving treatment should require coercive actions to force people to improve their health even in non-life saving circumstances.

The move from the obligation to save one’s life to an equivalent obligation to maintain one’s health is only possible if one rejects the distinction that is apparent in Rambam.⁷¹ Indeed, it seems to me that the rejection of this extreme position by most *Posekim* constitutes recognition that these two obliga-

who seem to assume that this should be a valid source; it is not clear what the status of this argument is in their conclusion. See also *Teshuvot Shevet Ha-Levi* 6:111 and *Teshuvot Ve-Hanhagot* 1:316. R. Mordechai Willig told me in a private conversation that the application of this principle to smoking, the original context of R. Yisrael Meir Ha-Kohen’s discussion, is faulty, as there is no formal immediate damage. Nevertheless, he still maintains that smoking is prohibited.

⁶⁹ *Sefer Issur Ve-Heter* 60 of R. Yonah ben Yisrael Ashkenazi (a student of R. Yisrael Isserlin, author of *Terumat Ha-Deshen*). It is unclear whether these prohibitions overlap or combine.

⁷⁰ *Teshuvot Tzitz Eliezer* 15:40.

⁷¹ This conclusion assumes that R. Waldenberg did not believe that eye exams are considered life-saving, which is possible given that Talmud’s equation between blindness and death (*Nedarim* 64b) and the statement that eye injuries are presumed to be life-threatening (*Avodah Zarah* 28b). R. Waldenberg does not raise this point, however.

tions are in fact distinct.⁷²

It should be noted that this fundamental distinction seems to be recognized by R. Waldenberg himself, who notes that the passage in *Hilkhot De'ot* is more expansive than the passage in *Hilkhot Rotze'ah* and that avoidance of danger can be coerced, while maintaining health cannot.⁷³ However, he does not set up clear differences, and in the responsum cited above, he ignores the distinction entirely.

Other Sources for the Obligation to Treat Patients

It is notable that other sources are provided as well for the *mitzvah* to treat patients who ask for treatment. For example, based on a Talmudic discussion,⁷⁴ Rambam,⁷⁵ Ramban,⁷⁶ *Tur*,⁷⁷ and *Shulhan Arukh*⁷⁸ suggest that this is based on “*ve-hashevoto lo*,” the obligation to return lost objects to their owners, which includes their life and their health. R. Waldenberg argues that treating patients fulfills the *mitzvah* of “*ve-ahavta la-re'akha kamokha*,” loving your fellow as yourself.⁷⁹ These obligations would apply to all treatments, life-saving or not, as one must return objects of all value⁸⁰ and kindness is not limited to life-saving situations.⁸¹ However, since these obligations

72 While *Posekim* have not explicitly presented the arguments that I have, no *Posek* has argued that coercion should be expanded as far as *Tzitz Eliezer*. See, for example, *Iggerot Moshe, Hoshen Mishpat* 2:73, 2:74; *Nishmat Avraham* 155:2, citing R. Shlomo Zalman Auerbach.

73 *Tzitz Eliezer* 15:39.

74 *Sanhedrin* 73a; *Bava Kama* 81b; see also *Sifri, Devarim* 223.

75 *Perush Ha-Mishnayot, Nedarim* 4:4. See also *Hilkhot Nedarim* 6:8. For an interesting discussion of Rambam's position, see *Teshuvot Yabel Yisrael* 49.

76 *Torat Ha-Adam, Sha'ar Ha-Meivush, Inyan Ha-Sakanah*.

77 *Tur, Yoreh Deah* 336.

78 *Shulhan Arukh* 336:2.

79 *Tzitz Eliezer* 15:40.

80 Although the context in the original literature refers only to life-saving situations, I see no reason to limit it.

81 The question of whether one should apply these categories when the patient refuses treatment relates to the broader discussion of informed consent in Halakhah, which is beyond the scope of the present article. See n. 58 above.

apply only to a treating doctor and not to a potential patient, I have not discussed them at length in this article.⁸²

Shomer Peta'im Hashem

The verse, “*shomer peta'im Hashem*,” “*Hashem guards the fools*,” has been cited to indicate that individual actions that might, in the aggregate, lead to one’s death are not prohibited. *Binyan Tzion* argues that we are more lenient regarding acts that are dangerous in the long term than regarding immediate dangers, which are prohibited due to the sources cited above. Accordingly, any action that is not dangerous at the moment is permitted.⁸³ Thus, while it may be true that eating high-cholesterol foods consistently may lead to heart problems, eating one piece of cake is permitted.⁸⁴

“*Shomer peta'im Hashem*” seems to create an obligation to live a lifestyle that is considered normally healthy and safe, although the exact parameters of the obligation are unclear. Some formulations of this principle seem similar to the formulation we have suggested for the obligation generated by Rambam’s logic. According to *Binyan Tzion*, for example, one would have to resort to logic to decide the parameters of what is permitted and what is not.

R. Yehuda Amital suggests two explanations of the principle of “*shomer peta'im Hashem*” –either it legally defines the situation as not dangerous or it allows people to engage in

82 R. Mordechai Willig suggested to me that the source of “*ve-hashevoto lo*” could indeed apply to the patient as well, but I have not found this position suggested by any other authorities.

83 See *Binyan Tzion* 137 and the discussion in *Yevamot* 12b, which drives his position.

84 This argument has been advanced to permit smoking as well, albeit reluctantly. See, for example, *Iggerot Moshe, Yoreh De'ah* 2:49; *Teshuvot Ve-Hanhagot* 1:316. R. Chaim Jachter, *Gray Matter* (New Jersey, 2008), vol. 3, 15-18, notes that most *Posekim* have ruled that smoking is prohibited completely. R. Mordechai Willig suggested to me that one should distinguish between smoking and eating unhealthy foods – defining the former as an objective forbidden act but not the latter – based on our distinction between life endangering acts and unhealthy lifestyles.

somewhat dangerous situations.⁸⁵ He suggests that if one maintains that the prohibition to endanger oneself is rabbinic, it is easier to argue that it is permitted to endanger oneself under certain circumstances. If the prohibition is biblical, however, it is easier to explain that certain activities are legally not considered dangerous.

Conclusion

The existence of an obligation to maintain one's health seems to have been accepted by halakhic authorities, although they provide different sources and reasons for the obligation. Although, as I have argued, specific sources have been misunderstood and the implications that have been drawn have sometimes been mistaken, the general principle cannot be denied. As R. Yehiel Michel Epstein writes, "*ke-ilu bat kol yatza di-khen halakhah*" – it is as if a heavenly voice declared that this is the law.⁸⁶ Thus, while the obligation may be hard to pin down, it is hard to deny that, as Rambam writes, "Maintaining a healthy and sound body is among the ways of God,"⁸⁷ and is part of being an *oved Hashem*. However, to fully understand the implications of this obligation, one must understand its source and what it does and does not entail.

85 See n.42 above. R. Amital uses this distinction to explain a dispute among *Rishonim* about a passage in *Yevamot* 12b, *Ketubot* 39a, and *Niddah* 45a. He suggests that the latter formulation might permit smoking, although he does not present a conclusive position; see 268, n.1.

86 See, for example, *Arukh Ha-Shulhan*, *Orah Hayim* 34:3, 128:64, 345:18; *Yoreh De'ah* 275:13.

87 *Hilkhot Deot* 4:1.