

# Clarifying the Question of Cosmetic Surgery

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Although there have been cases of plastic surgery that date back to 2600 years ago, there has been a relatively recent upsurge in plastic surgery operations due to improved sterilization techniques and the advent of anesthesia [1]. Since plastic surgery operations were so rare until recently, teshuvos did not appear on the subject until about 60 years ago [1]. The topic of plastic surgery raises many halachic issues. While some of these issues seem clear-cut, upon delving into them it becomes evident that the prohibitions potentially encountered with plastic surgery are not well defined. This has led to a disagreement among poskim as to the permissibility of cosmetic surgery.

In any discussion of plastic surgery and halacha, a distinction must be made between cosmetic surgery and reconstructive surgery. Reconstructive surgery is the term used for plastic surgery performed to repair damage caused by a disease, birth defect, or an accident. The halachic issues surrounding reconstructive surgery are different and pose fewer problems than those surrounding cosmetic surgery. Therefore, this article will focus on cosmetic, rather than on reconstructive, surgery.

Cosmetic surgery is performed solely to enhance the patient's body image. The earliest halachic authority to address the question of whether cosmetic surgery is permitted is Rabbi Lord Immanuel Jakobovits. Rabbi Jakobovits outlines four main concerns with plastic surgery. Two of these issues are halachic, while the other two are philosophic. The first is chavalah, the prohibition against wounding oneself or others. The second is the prohibition against placing oneself in a situation of danger, or sakana. The third, more philosophic issue, is the concern that people should not become too vain. This concern pertains more to males than females and ties into the prohibition of begged isha (the prohibition against men wearing women's garments). The fourth, purely philosophic issue that Rabbi Jakobovits discusses is the question of whether man may improve on G-d's creation, which is thought to contain no blemishes [1].

Ultimately, Rabbi Jakobovits concludes that cosmetic surgery is forbidden due to the fact that it causes vanity. However, he makes allowances when cosmetic surgery was performed to improve someone's shalom bayis (domestic harmony) or to enable a person to earn a decent living [1].

Rabbi Yehuda Waldenberg, the late rabbi of Shaare Zedek Hospital, addresses the question of whether cosmetic surgery was permitted in his work Tzitz Eliezer (Volume XI, no. 41 subsections 8 and 9). Similar to Rabbi Jakobovits, Rabbi Waldenberg rules that cosmetic surgery is forbidden, stating that cosmetic surgery falls under the prohibition of chavalah on the part of the patient and on the part of the surgeon. The patient may not allow the surgeon to perform the surgery, since doing so would constitute wounding oneself, and the surgeon is forbidden from performing the surgery since the surgery would cause the patient to sustain a wound.

Furthermore, Rabbi Waldenberg states that cosmetic surgery is prohibited since one may not put his or herself "into a situation of the usual kinds of danger that are associated with operation" [2]. Rabbi Waldenberg also has grave concerns regarding the issue of improving on G-d's work. He expounds his opinion at length, that mere mortals cannot take the task of creation into their own hands. The form that G-d gave us, he states, is the form that fits us best.

Interestingly, Rabbi Waldenberg does not address the issue of vanity. Instead, he raises a different concern that Rabbi Jakobovits did not mention at all. Rabbi Waldenberg believes that cosmetic surgery is out of the realm of the acts of healing that the Torah allows a doctor to perform [2]. The Torah states (Shemos 21:19) "v'rapoh yirape" (he shall be thoroughly healed). The Talmud (Baba Kama 85a) explains that this verse grants permission for a doctor to heal. Both Rashi and the Tosefos ask why the Torah needs to dedicate a pasuk to this issue. They explain that we might think that since illness was decreed from G-d, we are not allowed to interfere and heal an ill person. The verse informs us that this is not the case.

Others state that the Torah is concerned that we would think that healing falls under the prohibition of chavalah. Therefore, the Torah notes that when someone wounds someone else with the motivation to heal, there is no issue of chavalah involved [3]. Rabbi Waldenberg, supra, limits this leniency. He holds that the Torah does not mean to grant permission for a doctor to cause wounds for the sole purpose of beautification.

Rabbi Moshe Feinstein, widely regarded as the posek hador (chief law decisor of the generation) and Rabbi Waldenberg's contemporary, rules that cosmetic surgery is permitted (Igeros Moshe, Choshen Mishpat, Vol. II, Chapter 66, page 289). Unlike Rabbis Jakobovits and Waldenberg, Rabbi Feinstein addresses only the issue of chavalah. Rabbi Feinstein cites the Rambam (Hilchos Chovel and Mazik, Chapter 5, Halacha 1), who maintains that the Torah only forbids wounds given in a contentious manner. Since wounds caused by cosmetic surgery arise from the opposite intent, Rabbi Feinstein concludes that cosmetic surgery does not come under the category of chavalah. Rabbi Feinstein further maintains that even if the Rambam's definition of chavalah is invalid, cosmetic surgery is still permitted. He states that since the cosmetic surgery was for the patient's benefit and the patient is choosing to do surgery from his or her own free will, there is no issue of chavalah involved.

As seen above, Rabbi Feinstein only discusses chavalah. Although others have seen chavalah as only one of the many issues associated with cosmetic surgery, Rav Feinstein considers chavalah to be the only issue. In order to see how there can be room in the prohibition of chavalah to allow for cosmetic surgery, we must examine this prohibition further.

The Mishnah (Babylonian Talmud, Baba Kamma, p. 90) quotes Rabbi Akiva as saying, "One who injures himself, even though he is not allowed, is not liable, while another who injures him is." According to this Mishna, Rabbi Akiva prohibits self-injury. The Talmud (Baba Kamma p. 90-91), however, cites a contrary report, where Rabbi Akiva states, "A person is permitted to injure himself." The Talmud attempts to reconcile the two seemingly contradictory attributions. However, there is ultimately no reconciliation. Instead, the Talmud concludes that there is simply a disagreement among the Tannaim as to what Rabbi Akiva actually ruled.

The Talmud states that the Tanna who prohibits self-injury follows the view of Rabbi Eleazar Hakkapar, who holds that a nazirite sins by inflicting upon himself the pain of not drinking wine. Rabbi Hakkapar extends this prohibition, a fortiori, to a person who fasts. The Talmud states that the same reasoning applies to self-injury. The Meiri, however, notes that the prohibition of Rabbi Hakkapar is Rabbinic in origin (Meiri, Beit Habichira, Babba Kamma p. 91, b). This is important because Rabbinic prohibitions allow for more exceptions than biblically based prohibitions. Thus, it may be that according to the Meiri, even Rabbi Hakkapar would allow self-injury when the benefit outweighs the injury.

The Talmud adds the opinion of Rabbi Chisda, an Amorra, to the mix. Rabbi Chisda was once walking among thorns when he picked up his garments, causing his legs to be injured. Rabbi Chisda justified the self-injury, asserting that while the injury to his body would eventually heal, the injury to his garments would not. It is evident from Rabbi Chisda that the prohibition against self-injury is not absolute.

The Ramah (Shita Mekubetzes, Babba Kamma p. 91, b) states that because he is the latter authority on this topic in the Talmud, the law follows Rabbi Chisda. The Ramah therefore concludes that self-injury is not prohibited, which follows the view of Rabbi Akiva in the Gemora over the citation of Rabbi Akiva in the Mishna. The

plain meaning of the Ramah cited in the Shita Mekubetzes does not distinguish between self-injury for a purpose and self-injury for no purpose. Thus, the Ramah would seemingly never prohibit self-injury. Rabbi Feinstein notes this but disagrees with the Ramah. According to Rabbi Feinstein, Rabbi Chisda allows self-injury only when there is an overriding benefit. Rabbi Feinstein cites Rabbi Chisda as the source for the Rambam's view that chavalah is prohibited only in a contentious manner.

Most, if not all, cosmetic surgery would seem to be allowed under the view that self-injury is permitted. According to Rabbi Chisda, if there is overriding benefit to performing the surgery, cosmetic surgery seems to be permissible. Therefore, a plain reading of the Talmud in Babba Kamma shows it is possible that all of the Tannaim (Rabbi Akiva in the Mishna and Gemora, and Rabbi Hakkapar) would allow beneficial cosmetic surgery. This accords with the Rambam and Rabbi Feinstein, but not with the Ramah. However, even the Ramah concludes that the law accords with Rabbi Chisda. Thus, the Rambam, the Ramah, and Rabbi Feinstein all conclude that the Talmud allows self-injury when there is an overriding benefit. Therefore, cosmetic surgery should be permissible under Jewish law in specific cases where there is an overriding benefit.

The authorities analyze the innovation of cosmetic surgery under the rubric of halacha. Similar to many other medical questions, the halachic issues involved in cosmetic surgeries are not clear-cut. Rabbi Jakobovits, Rabbi Waldenberg, and Rabbi Feinstein each found different concerns for cosmetic surgery. Rabbi Feinstein comes to a very different conclusion than Rabbi Jakobovits and Rabbi Waldenberg. Although most poskim nowadays follow the opinion of Rabbi Feinstein, it is worthwhile to understand Rabbis Jakobovits' and Waldenberg's concerns. As new cosmetic surgery procedures are invented, new halachic concerns may be raised. It seems that cosmetic surgery will continue to remain a relevant topic in halachic discourse.

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#### *Acknowledgements:*

I would like to thank my parents for supporting me in everything that I do. I would also like to express my hakaras hatov to Dr. Babich for helping me with this article.

#### *References:*

- [1] <http://www.aish.com/ci/sam/48955041.html>
- [2] Etengoff, D. Halachic Implications of Cosmetic Surgery. 87.
- [3] Geisler, D. (2004). Cosmetic Surgery in Halacha. 9-30.