



Patient's Choice – When to Avoid Coercive Medical Treatment

Last week's essay outlined the basic Halachic principles regarding coercive medical treatment. We saw that, Halacha takes a fundamentally different approach than prevailing popular medical ethics that grant the patient the exclusive right to decide on his medical treatment, even including the refusal of life-saving treatment. The Halachic position is based on two principles:

1. A person is not considered the "owner" of his body and has no inherent right to harm himself or to consent to harmful or destructive acts. Just as he is not permitted to commit suicide under any circumstances, he is also not permitted to refrain from life-saving medical treatment.
2. A physician is obligated to save the life of any patient in his care. This includes life-saving operations when necessary.

We also discovered that the majority of Poskim imply that coercive medical treatment is only justified in cases of *Pikuach Nefesh*. Though they do not cite an explicit source for this contention, it is logical to assume that a person should not be forced to undergo treatment if his life is not at risk.¹

In spite of the clear position of Halacha, coercive medical treatment is a complicated matter. Its application depends on the patient's reason for refusal, the nature of the treatment, and the harm it may cause. This essay will discuss exceptional cases where coercive treatment should not be implemented.

The first condition for enforcing medical treatment is that it must be effective. The Poskim are unanimous that coercive treatment should not be considered if the treatment's effectiveness has not been tested and there is no medical consensus as to its use.

This is stated clearly by Rav Yaakov Emden *zt"l*² (*Mor u'Ketzia* 328), whose forceful words on this matter have become a cornerstone of Halacha:

This is only when he wishes to refrain from "Refua Vada'is" - a proven cure (treatment based on medical consensus is considered a proven cure) and wishes to be stringent due to the prohibition of Shabbos. But if he refrains

¹ Last week's essay clearly outlined the basis for the Mitzva of saving lives and suggested an additional reason why coercive medical treatment only applies in cases of *Pikuach Nefesh*. (We should point out that the *Tzitz Eliezer* appeared to differ and mandates coercive medical treatment even in cases where the patient's life is not at stake.) See also below for Rav Moshe Shternbuch *Shlit"a*'s ruling regarding a patient who may lose a limb if he does not undergo treatment.

² Also known as *Ya'avetz* (*Yaakov Emden ben Tzvi*)



because he doesn't consider the treatment to have been tested – even if this is only his position, and certainly if another physician (who disputes the first physician's recommendation) concurs – we do not coerce him. Certainly if he is concerned that the medication recommended by the physician will harm him, we may not coerce him even during the week, and certainly on Shabbos. This is true of medications that are administered to a patient [to treat] an internal disease, of which the physician is not certain – he merely makes an assessment and suggests medications which he is not certain of. Then, a person is certainly praiseworthy for refusing them. He should not trust in a human doctor and his medications, and should leave the matter for the reliable Doctor who heals for free. Only with regard to an external disease or injury about which the physician has clear understanding and for which he uses medications which are clear and tested, do we always compel an intransigent patient whose life is in danger, in any way that the Torah "grants permission to heal".³

We may deduce the following from the *Ya'avetz's* words:

1. Coercive medical treatment is only justified when the medication is proven, including those that have garnered medical consensus, and the patient is refusing it for non-medical reasons (such as wanting to avoid desecrating Shabbos).
2. A patient has the right to say that he does not trust the treatment, particularly if he is concerned that it will harm him, and certainly if another physician agrees with him.
3. He has this right only when the treatment's effectiveness is uncertain, such as in the case of internal disease. Then we may assume that the physician is not certain that the treatment is effective and is merely making an educated guess. But if [the diagnosis is certain and -ed.] the treatments are proven the patient may be coerced even when he is objecting for medical reasons.

It is important to point out that the *Ya'avetz* wrote these words more than 250 years ago when medical knowledge was extremely limited and many of the medications and medical practices relied solely on various local and competing medical traditions, and not on clear scientific research as exists today. Today, medications are administered based on clear diagnoses and are usually prescribed on the basis of proven efficacy. Therefore, it is reasonable to assume that the majority of contemporary medical treatment would constitute "*Refua Vada'is*". The fact that

³ See the remainder of the *Ya'avetz's* statement in last week's essay.



sometimes a drug does not respond as expected or a complication arises during a medical procedure, does not render them “unproven”.

Nevertheless, there is a broad range of new and experimental treatments even today which are unproven. There are also patients whose medical condition is complex and medical opinion is divided as to their treatment, such as whether to intervene surgically or not, or to opt for watchful waiting and expectant management. This is fairly common, and in all such cases, the final decision rests with the patient.

It is also common for patients to seek a second opinion, which sometimes leads to an alternative approach than the one prescribed by the patient’s current physician. Here too, a patient cannot be coerced to accept the treatment, as stated by the *Mor u’Ketzia*.

Rav Moshe Feinstein zt”l (*Igros Moshe, Y.D. 4:24:4*) rules that coercive surgery is only permissible when it is extremely likely to be successful – “*Rov Gadol She’yatzliach haNituach*”. If it is in doubt, the patient has the right to oppose it. Rav Moshe Shternbuch *Shlit”a* (*Teshuvos v’Hanhagos 1, Kuntres haRefua* and 3:363) similarly concludes that the patient may only be coerced when the treatment is likely to extend his life, not if it is in doubt. Though in matters of *Pikuach Nefesh* we do not usually consider “likelihoods” – i.e. we attempt to save a person’s life even if there is only a small chance of success – nonetheless, we cannot force a patient to receive treatment against his will in the setting of significant uncertainty about whether it will be effective.

Another case to consider is that of a patient’s objection to unproven medical treatment based on concerns about the pain or suffering it will cause him. In this regard, Rav Shternbuch (*Ibid. 1:859*) was asked whether a patient could be forced to undergo a nephrostomy, which would cause him to suffer greatly. Rav Shternbuch responded that although pain and suffering are no justification for refraining from life-saving medical treatment, if even the physicians agree that the chances of extending the patient’s life are slight, he is under no obligation to consent to the procedure. He writes:

We do not find that there is an obligation for a patient to tolerate extraordinary pain when his condition is unlikely to improve even after undergoing the painful treatment. Though we may override prohibitions even to provide treatment that is unlikely to be successful, that is because the Torah says “And you shall live by them”. But the obligation to save a life is based on “And you shall return it to him” and “Do not stand [idly] by the blood of your fellow”. Therefore, where the patient asks us to save him or is silent, physicians are obligated to employ



every means to save him, even if they are unlikely to be successful. But where the patient himself forgoes it, and is not willing to tolerate the suffering, and it is unlikely to be successful, we do not find that there is an obligation to cause him suffering against his will, particularly considering the fact that the suffering is likely to worsen his condition. He is allowed to decide to hope for the salvation of Hashem.⁴

The Poskim also discuss another common question regarding a patient who is likely to die within a number of days or weeks, and surgery (which would cause him to suffer greatly) could extend his life slightly, though not cure him, but without the surgery he is certain to die. They consider whether the surgery itself is likely to put the patient's life at risk. However, their consensus is that if there is even a small chance that it will be successful, it should be attempted despite the risk to the patient's "*chayei sha'a*" (the few days or weeks that he has left to live). Obviously, each case must be carefully considered before proceeding with surgery.

Further discussion of this question is beyond the scope of this essay⁵, however, it is very likely that surgery can only be considered with the patient's consent. It is within the patient's rights to refrain from taking the risk and he may not be coerced.⁶

R' Dr. Abraham (*Nishmas Avraham* Vol 2, p57⁷) relates that he asked Rav Shlomo Zalman Auerbach zt"l about a 50-year old patient suffering from complications of diabetes which had already caused blindness and multiple vascular issues and infections. One of his legs had already been amputated due to necrosis, which had now developed in his other leg, and he was suffering greatly. The internal medicine specialists and surgeons were unanimous that he would die within several days unless his second leg was amputated. However, the surgery could also cause his death and, even if it would be successful, it would not cure his underlying disease which would continue to endanger his life. The patient was unwilling to undergo the surgery due to pain and suffering it would cause, and also had no desire to life as a blind double-amputee.

Rav Shlomo Zalman ruled that the surgery should not be performed against the patient's will, **nor should any attempt be made to convince him to change his**

⁴ Rav Shternbuch also permits coercing a patient when he is in danger of losing a limb, though his life is not in danger. He may cause him pain, though not extraordinary pain, and he may not employ unproven treatment. The patient is permitted to sacrifice his limb if he doesn't want to suffer greatly or undergo unproven treatment, even if physicians are certain that he will later regret the decision.

⁵ See the *Pischei Teshuva* 339:1 citing the *Shevus Yaakov*, *Binyan Tzion* 1:111, *Achiezer* 2:16:6 & 10:25:17.

⁶ See *Nishmas Avraham* 2, p47.

⁷ Second edition



mind. Since the surgery would endanger his life and would only increase his suffering, and there was no hope for his full recovery, he was not obligated to undergo it.

Even when physicians all agree that a patient should receive a certain course of treatment, they should make great effort to ensure that the patient agrees to it. We may derive the following guidelines from a *Teshuva* of Rav Moshe Feinstein *zt"l* (*Igros Moshe C.M.* 2:73) in this regard:

1. A patient who trusts his physician's recommendation of treatment but refuses it due to despair, pain, etc. should be coerced.
2. If his refusal is due to his lack of trust in his physician, they should endeavor to find him a physician in whom he trusts.
3. If a physician in whom he trusts cannot be found, they should wait until he can be convinced to undergo the treatment or – if he is willing – transfer him to another hospital where there is a greater chance that he will be convinced.
4. If he requires emergency treatment which doesn't permit waiting or transfer, and the physicians in the hospital are unanimous that this is the correct treatment, they should coerce him.
5. However, this should only be implemented if the physicians do not believe that the coercion will frighten him, as this could harm or even endanger him.
6. Therefore, physicians should avoid employing coercive medical treatment as much as possible. This requires a great deal of forethought, considering that it may not be beneficial.
7. Rav Moshe stresses that the physicians should act "*l'shem Shamayim*" (for the sake of Heaven).