

Milestones in Jewish Medical Ethics Medical-Halachic Literature in Israel, 1948-1998

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A. Definition of Concepts

1. Introduction

In the last fifty years a minor revolution has begun in the field of medical-halachic literature. Articles from the wide expanse of halachic literature have been gathered together in the form of collections of articles unique to the halachot of medicine, professional medical-halachic compilations based on an encyclopedic structure and in the classic arrangement according to the chapters of the *Shulchan Aruch*. The revolution, however, has not been limited to the literary field. The last fifty years have seen the establishment of medical ethics as a multi-disciplinary profession, combining the skills of religiously knowledgeable physicians with Rabbis who have a broad understanding of medicine.

During this time new terminology connected to medicine and halacha has been created. Jewish medical ethics, medicine and Jewish law, medicine and halacha, medicine and law, and medicine and Judaism are all concepts that often overlap and seem redundant, but in fact they are each unique. Each must be defined and understood.

2. Medical Ethics¹

Since the beginning of the history of mankind we find moral problems in the medical field in the form of laws, regulations, instructions and oaths that were formulated for, or by, physicians. These references are found in the Hammurabi Laws in Babylon,² in the Egyptian Papyrus, in Indian and Chinese cultures, and amongst the ancient Greeks, first and foremost, Hippocrates.³

The ancient codes of medical-ethics were formulated by an individual or a small group of men, generally physicians. During the Middle Ages more oaths were formulated containing ethical rules. In the modern era there are those who regard the work of Thomas Percival, published in 1803, as the first basis of medical ethics upon

1. See Avraham Steinberg, *Medical Ethics*, pp. 3-27 this volume.

2. The King of Babylon in the 18th Century BCE. Researchers are in debate over the exact date of his rule. See "Hammurabi," *Ha-Enisiklopedia ha-Yisraelit ha-Kelallit*.

3. Approx. 337-460 BCE. One of the three great medical study books of the Rambam was *Pirush L'Pirkei Abukrat* (= Hippocrates). Translated to Hebrew by Dr. Zussman Muntner, (*Mossad ha-Rav Kook*, 1961).

which the professional medical codes of the United States and the Western world⁴ were built.

It is important to distinguish between two types of ethics: ethical rules that draw their force from moral systems and ethical codes that create, clarify and institutionalize work relations and protect the rights of members of various professional guilds.⁵ This overview will only address ethical systems of the first type.

Modern medical ethics, developed rapidly during the second half of the twentieth century, when the Western world was faced with the horrors of World War II. Medical ethics incorporates medicine, philosophy, religion, law, history, psychology, sociology, and education. If in the past the preoccupation with medical ethics had been in the hands of a few, the majority of whom were physicians that already worked in the field, today this branch has developed to be a popular field of interest not only for physicians but for experts in other fields as well as the wider public.

It should be pointed out that much of modern medical ethics originated in the United States and the United Kingdom and therefore does not necessarily reflect the approaches and philosophies of other Western countries, and that they certainly fail to reflect those of the Third World, East Europe, and the Far East. It is neither logical nor justified to assert that the values and customs of a few Western countries should dictate medical ethics policy to other countries, especially secular Western countries to religious countries. There are very deep differences between the secular Western approach and other religions.⁶

By its very nature secular ethics differs from any legal system. Legal systems generally take a definite stand on the issues they deal with, regardless of differences of opinion among judges or other authorities. Many maintain that ethics, in contrast, does not pretend to decide moral dilemmas with any degree of finality. Its aim is to define the problems, clarify the factors involved, and propose logical solutions.

4. See Chapman, C.B., *The New England Journal of Medicine* 301 (1979): 630; A. Steinberg *Medical Halachic Encyclopedia*, vol. 6, s.v. *torat ha-musar ha-kelalli*.

5. For example the ethical laws of The Institute of the Masters of Wine, 1986 edition and Gorlin, R.A. (Ed.) *Codes of Professional Responsibility*, Third Edition. (Bureau of National Affairs, Washington DC: 1994) pp. 191.

6. See Avraham Steinberg, *Medical Halachic Encyclopedia*, vol. 6, s.v. *torat ha-musar ha-yehudi*

3. Jewish Medical Ethics

Until relatively recently, the rules for medical ethics and practice were drawn from the standard texts of Jewish law and applied exactly as in other areas, such as finance and social relations. However, in light of the development of general medical ethics, the concept of Jewish medical ethics was born. The term ‘Jewish medical ethics’ was coined by the late Lord Rabbi Immanuel Jakobovits in his classic comparative halachic analysis, *Jewish Medical Ethics*.⁷ Rabbi Jakobovits’ halachic analysis compares a variety of subjects in the field of medicine.⁸

There is a fundamental difference between Jewish and general or secular ethics. The source of authority for the rules of moral behavior for Jewish medical ethics is, of course, the Torah; for secular medical ethics the source is human understanding, which can never be totally objective.

In Judaism, the approach to morality and proper behavior is comprehensive, both in interpersonal relations and in the relationship between man and God. Its instruction is conveyed in two principal ways: through defined laws, principles and rules, and through descriptions of the conduct of persons worthy of imitation.

The Torah and halachic literature establish general principles of interpersonal relations, such as:

- “Love your neighbor as yourself” – this is a great principle in the Torah.
- “That which is hateful to you do not do to your fellow”; that is the whole Torah – go and learn the rest.
- “You shall do what is straight and true in the eyes of God.”
- “Maintain the law and do charity.”
- “Perform justice and love of kindness and walk humbly with your God.”
- “The righteous man will live in his faith.”
- ...“In order that you will walk in the way of the good, and you will keep the customs of the righteous.”
- “Its ways are ways of pleasantness and all its paths are peace.”

But Jewish morality, like halacha, is not satisfied with theoretical rules alone; it insists on practical content. Among the

7. New York: Bloch Publishing, 1959.

8. See the overview of the second decade, below.

613 commandments in the Torah there are many that can be defined as moral or ethical commandments.⁹ These include acts of kindness; proper and respectful attitude toward others; avoiding causing harm to others through action, speech, or thought; protection of the weaker members of society; maintaining proper business and work ethics; fair judgment; and proper relations between the sexes. Moral instructions are found throughout halachic and Midrashic literature and forms the basis of moral teachings of the Middle Ages through modern times.¹⁰ In the middle of the 19th century the Mussar movement was established by Rabbi Yisrael Lipkin Salanter.¹¹ The Mussar movement was an elite spiritual movement for moral instruction and with an aspiration for self-improvement. The movements principles permeated into most Lithuanian Yeshivot and later, in different forms, into Chassidic Yeshivot and influenced prominent figures in Israel and abroad.¹²

4. Medicine and Jewish Law

Jewish Law is a modern concept that includes those issues in halacha that are the subjects of legal rights and obligations. Such subjects are considered legal issues under other legal systems, as opposed to religious and moral issues which are not.¹³ Jewish law deals with all subjects connected to medicine and law. If a somewhat simplified definition will suffice then we may say that medicine and Jewish law deals principally with interpersonal laws and almost not at all with the laws between man and God. The obligations of the physician, the patient, and society, for example, belong in Jewish law but the laws of practicing medicine on Shabbat or on Yom Kippur do not. They belong however in the field of medicine and halacha.

9. See A. Steinberg, *Jewish Medical Ethics*, pp. 28-42 this volume.

10. See Chazon Ish, *Emunah Ve-Bittachon*, Ch.3 *Musar ve-Halacha* (Published by Rabbi S. Greenman, Jerusalem, 1954). Discusses the relationship between the above halacha and Jewish ethics. Brought also at the end of "*Sefer Ha-Chazon Ish al Seder Taharot*." (Bnei Brak 1974).

11. See Weinberg, *Shut Sridei Aish*, Vol.4, *Tnuat Ha-Musar*; Immanuel Etkes, *Rav Yisrael Salanter ve-Reishitah Shel Tnuat ha-Mussar*, Jerusalem: Magnes Publishers, Hebrew University, 1982).

12. Influential not only on Torah scholars. See, for example, Judge Moshe Zilberg, (1900-1975), Supreme Court Judge (1950-1970), and others.

13. "*Mishpat Ivri*," *Ha-Entsiklopedia ha-Yisraelit ha-Kelallit* (Jerusalem: Keter Publishing House, 1987).

5. Medicine and Halacha

Medicine and halacha includes those issues of halachic rights and obligations as well as issues of religion and morality – in other words, those commandments that deal with interpersonal relationships as well as with the relationship between man and God. This category is broader than medicine and Jewish law, but narrower than medicine and Judaism.

6. Medicine and Judaism

Medicine and Judaism is a broad discipline that includes both medicine and halacha and the history of medicine. Since 1985 an optional semester-based course entitled ‘Medicine in Judaism’ has been held at the Hebrew University and Hadassah Medical School in Jerusalem. There are two equal parts to the course: History and halacha, both held in conjunction with the faculty of history and medicine.

B. Medical Halachic Literature: Ancient Times

1. From the Biblical Period through the Eighteenth Century

The halachic discussion of ethical dilemmas in medicine is ancient, its principles interspersed throughout the Bible and the Talmud. Over all historical periods halachic literature has included debates on medical topics. These debates were not organized together; rather they remained dispersed within halachic literature.

Only intellectual giants with a phenomenal grasp of the rich labyrinth of halachic literature were capable of finding the answers to halachic questions that arose from developments in medical research and technology. Everyone else was limited to the basics in a few chapters of the codes, such as the laws pertaining to patients and healing¹⁴ and the laws of saving life on Shabbat.¹⁵

Most questions involved an individual patient or physician. Cases such as community medical needs,¹⁶ that arose following the establishment of Jewish hospitals in London, Berlin, and Breslau in the eighteenth century, were relatively few.¹⁷

14. *Shulchan Aruch, Yoreh De'ah* 335-337.

15. *Ibid.*, *Orah Hayyim* 328-330.

16. See Steinberg, “*Beit ha-Holim be-Sifrut ha-Halacha*,” *Sefer Assia*, vol. 2 (Jerusalem: Schlesinger Institute and Reuven Mass, 1981), pp. 146-53.

17. See Steinberg, *ibid.* Shemuel Kottek, “*Toledot Ishpuz Holim*,” *Sefer Assia*, vol. 2, pp. 195-98.

Rabbi Dr. Mordechai Malki,¹⁸ a seventeenth century scholar and physician, wrote an interesting interpretation of the Torah in which the Torah text served as a point of departure to his own professional interest of medicine. For example: on the verse “*But Saray was barren*”¹⁹ he expounded an article on infertility and its causes and used the community regulations that appear in the biblical portion of *Yitro* to describe the state of medicine and diseases in his day. Of course, Rabbi Malki’s unique and interesting works, also deal with the laws of medicine and halacha pertinent to the halachot of Shabbat and circumcision.²⁰

While circumcision is often discussed within halachic literature, particularly in Maimonides’ *Laws of Circumcision, Tur, Shulhan Aruch*,²¹ and a few other places,²² whole works devoted to circumcision first began to appear in the eighteenth century.

2. From the Early Nineteenth Century until the Establishment of the State of Israel

During the nineteenth-century Jerusalem’s Jewish population began to grow. Consequently, the demand for medical services increased. During the early 1840s such services were still provided according to the traditional system: the burden of nursing care fell on the patient’s family, and the elderly and solitary were assisted by the *biqqur holim* societies in Jerusalem.²³ Dr. Shimon Frankel, together with other experienced local physicians, served the Jews of Jerusalem for many years following his arrival from England in 1843 on a mission instituted and funded by Sir Moses Montefiore.²⁴

With the growth of the Jewish settlement in Jerusalem came increased missionary activity, offering home visits and clinical services in order to attract traditionally observant Jews. The Anglican Mission’s plan to establish a hospital for Jews which would operate “with observance of the laws of kashrut and Shabbat” acted as a catalyst for the establishment of the first Jewish

18. 1640-1702, b. Italy, immigrated to Israel in 1677.

19. Genesis, 11:30

20. See *Ma’amarim be-Refuah le-Refael Mordechai Malki*, compiled, ordered and with a preface by Meir Benihu. Published by Ha-Rav Nissim, Jerusalem, 1985.

21. *Yoreh De’ah* 260-261

22. For example, *Kelallei ha-Mila* by Rabbi Ya’aqov and Rabbi Gershon ha-Gozer, father and son, both thirteenth-century *mohalim* in Germany.

23. Aryeh Morgenstern, *Geula be-Derekh ha-Teva’*, second edition (Jerusalem: Maor, 1997).

24. *Ibid.*

hospital in Jerusalem, which opened its doors at the end of 1844, only days before the official opening of the Anglican Mission's hospital.²⁵ The Jewish hospital created a need for halachic clarification of medical issues as well as the issue of accepting medical assistance from the Mission.²⁶

Four more Jewish hospitals were founded in Jerusalem during the nineteenth century: Rothschild (later renamed Hadassah), Bikkur Holim, Misgav Ladakh, and Shaare Zedek.²⁷ Two of these were actively involved in the clarification of medical halachic issues: Hadassah, particularly with the establishment of its medical school,²⁸ and Shaare Zedek, where the Dr. Falk Schlesinger Institute for Medical-Halachic Research was later established.

Several books on medicine and Judaism were published at this time. In the three volumes of *Midrash ha-Refu'a*,²⁹ Moshe Perlman brought together thousands of medical sources from the Talmud, Midrash, and *Zohar*. At the time of his great efforts Perlman was unaware of the pioneering work of Julius Preuss,³⁰ a German-Jewish doctor whose fascinating *Biblisches-Talmudische Medizin* was published in Berlin in 1911, but an examination of Perlman's work reveals hundreds of sources not mentioned by Preuss.

Two years after the publication of the first volume of *Midrash ha-Refu'a*, Dr. Y.L. Katzenelson's sons published his *Ha-Talmud ve-Hokhmat ha-Refu'a* in Berlin.³¹ Unlike Preuss and Perlman, Katzenelson addressed specific medical issues in the Talmud. Following a seventy-page medical introduction, he elaborates on ritual slaughter of animals unfit for kosher consumption, going on to present the Talmudic sages' astonishing knowledge of the heredity of hemophilia, human anatomy, leprosy, the volume of blood in a newborn, and the medical significance of the laws of

25. Ibid.

26. Ibid., concerning the *herem* declared in Jerusalem against cooperation with the mission.

27. Yehoshua Leibowitz, "Le-Toledot Battei ha-Holim bi-Yerushalayim," *Sefer Assia*, vol. 2, pp. 199-203.

28. See A.D. Zilberstein, "Ba'ayat Nittuhei ha-Meitim u-Fitrona," *Yavneh: Qovets Aqademi Dati* 3, nos. 7-12 (Nissan 5709): 210-15; note and correction to Zilberstein's article by Rabbi Kalman Kahana, "Nittuhei Meitim be-Halacha," *Ha-Ma'ayan* 7, no. 2 (5727): 49-50; Steinberg, *Encyclopedia Hilkhatit Refuit*, vol. 3, s.v. *nittuah ha-met*.

29. Tel Aviv: Dvir 1926-34

30. 1861-1914. See Fred Rosner, "Julius Preuss," *Medical History* 19, no. 4 (1975): 376-88. Dr. Rosner translated and edited the English version (New York: Hebrew Publishing Company, 1978).

31. *Ha-Talmud ve-Hokhmat ha-Refu'a* (Berlin: Haim Press, 1928).

ritual purity and impurity, and finishing with his innovative *pièce de resistance*: a Hebrew-Yiddish-Russian-Latin glossary.

Dozens of books and monographs on circumcision were published during this period as well. Some dealt with only the halachic aspects of this commandment while others also addressed the medical aspects.³²

3. Fifty Years of Statehood

The fifty years since the establishment of the State of Israel can be divided into two basic periods: the years of foundation and infrastructure, and the years of superstructure. It was during this second period that institutes for medical-halachic research opened and professional publications were established. Whilst in 1948 there existed very few publications dealing with medicine and Judaism, today one needs several bookshelves to hold the many publications on different aspects of medicine in Judaism.

Despite the above distinction between the first and second time periods since the establishment of the State of Israel, it is useful to analyze the development of each of the five decades from Israel's establishment individually.

C. First Decade (1948-1958)

1. The Chief Rabbis: Rabbi Isaac Herzog and Rabbi Ben-Tsiyyon Meir Hai Uziel

With the founding of the State, and the transition from partial to full self-rule, every field of daily living had to be made independent from reliance upon the foreign ruler. Quick decisions were necessitated that by nature could not always have provided perfect outcomes. Halacha had to grapple not only with familiar questions about the individual and the community but also with complex questions pertaining to an independent country and all it entailed.

The founding of the National Home acted as a catalyst for the development of medical-halachic research as well as other research pertaining to the exercising of independent public fields. A number of outstanding figures were involved in intensive medical-halachic research collecting all relevant information and publishing studies and reports. This group included the Sefardic Chief Rabbi of Israel

32. See Steinberg, "*Ha-Bibliografia 'al Mitsvat ha-Mila*," *Sefer Assia*, vol. 3, pp. 362-66.

(Rishon le-Tsiyyon), Rabbi Ben-Tsiyyon Meir Hai Uziel,³³ the Ashkenazi Chief Rabbi of Israel, Rabbi Yitshak Isaac ha-Levi Herzog,³⁴ and Rabbi Shaul Yisraeli,³⁵ as well as Rabbi Eliezer Yehuda Waldenberg, who is still active today.³⁶

As a result of the increasing development of the *Yishuv* in *Erets Yisrael* and the impact of the rise of Hitler on the possibility for Jews to study medicine in Europe, the need for a faculty of medicine in Palestine became acute. Research began immediately after the Second World War, three years before the declaration of the state. Once established, certain aspects of teaching medicine raised halachic issues. The question of the study of anatomy suddenly became relevant. Indeed, the board of directors of Hadassah University Hospital officially requested guidance from the Chief Rabbinate on what course to follow for studying anatomy. Rabbi Herzog took upon himself the task of researching the halachic perspective on studying anatomy and he published his results in the main rabbinical journal of the time, *Qol ha-Torah*.³⁷

Rabbi Uziel, Rabbi Herzog's colleague, had already dealt extensively with medical issues when he served as chief rabbi of Tel-Aviv-Jaffa.³⁸ Before the Second World War, he published two comprehensive responsa on the issue of autopsy for the purpose of medical research in his first volume of responsa, *Mishpatei Uziel*.³⁹ Despite some differences of opinion between Rabbi Herzog and Rabbi Uziel, the common ground between the two permitted

33. 1880-1953, b. Jerusalem. *Rishon le-Tsiyyon* of *Erets Yisrael* from 1939 and of the State of Israel from its establishment until his death.

34. 1888-1959, b. Lomzhe, Poland. Received his Ph.D. from the University of London in 1919 for his research on *techeilet* and *argaman* in ancient Israel. Served as chief rabbi of Ireland (1921-37) and as Ashkenazi chief rabbi of *Erets Yisrael* since 1937 and of the State of Israel from its establishment until his death. Father of the sixth president of Israel, Haim Herzog.

35. 1912-95. Senior member of the Council of the Chief Rabbinate of Israel, *rosh yeshiva* of *Yeshivat Merkaz ha-Rav Kook*, supreme rabbinical court judge (1965-82).

36. Born 1917. Former head of the rabbinical court in Jerusalem, member of the supreme rabbinical court, author of responsa *Tsits Eli'ezer*, winner of the Israel Prize (1976) and of the First International Prize for Medicine, Ethics, and Halacha (1993).

37. *Qol Tora*, year 1, nos. 2-3 (Sivan-Tammuz 5707), until year 3 (Nissan-Iyyar 5709). Quoted in Zilberstein, op. cit.; reprinted with additions from the monograph of Rabbi Yitshak Isaac Herzog, *Pesaqim u-Ketavim*, vol. 5 (Jerusalem: *Mossad ha-Rav Kook*, 1990), pp. 574-604

38. Summaries of his rulings on gynecology and fertility were published by Steinberg in *Sefer Assia*, vol. 2, pp. 127-43.

39. 10:28-29 (Tel Aviv, 5695). Reprinted in responsa *Pisqei Uziel bi-She'elot ha-Zeman*, 32-33, in the wake of the debate in *Sha'arei Tsiyyon*, year 6, nos. 6-7 (Nissan 5686).

medical students to study anatomy. Consequently, the expanded Council of the Chief Rabbinate established basic conditions that would allow anatomy studies without violating halacha.⁴⁰ Hebrew University and Hadassah's acceptance of these conditions facilitated the opening of the School of Medicine soon after the establishment of the State.

Prior to the legislation of the Anatomy and Pathology Act, Rabbi Herzog asked Rabbi Waldenberg to prepare an halachic opinion on the subject. Rabbi Waldenberg detailed statement was later published in *Tsits Eli'ezer*.⁴¹

2. *Ha-Torah ve-Ha-Medinah*

With the establishment of the State of Israel, *Hilchot M'dinah* – laws of the State – *halachot* that for generations had been considered inapplicable until the Messianic age, became relevant. Rabbi Shaul Yisraeli, who was the rabbi of Kefar ha-Ro'eh at the time of the establishment of the State and later the eldest member of the Council of the Chief Rabbinate, encouraged the foremost halachic authorities to clarify contemporary issues and publish their research in *Tora u-Medina*. The first issue was published in 1949, followed by thirteen more between 1950 and 1962. The fourth issue (1952) included material on medicine and halacha.⁴² In the late 1980s the Zomet Institute published a newly edited selection of articles from this series, including articles on the rights and authority of the physician, preservation of life and health, the definition of *piquah nefesh* (saving life), autopsy, and euthanasia.

3. *Tsits Eli'ezer*

Rabbi Eli'ezer Yehuda Waldenberg served as the head of the Jerusalem *beit din* (religious court) and as a member of the Supreme Rabbinical Court in Jerusalem. His home, in a small alley near the original location of the Shaare Zedek Medical Center, facilitated a close relationship with the doctors there. He delivered a regular lecture on halacha in the hospital's synagogue and answered the often complicated questions posed by the doctors.

40. Conscious, written consent by the person donating his corpse and preservation of the amputated limbs and their proper burial in accordance with halacha. These basic conditions were later incorporated in the Anatomy and Pathology Act of 1953.

41. *Tsits Eli'ezer*, Vol. 4, 13.

42. *Be-Tsomet ha-Tora ve-ha-Medina*, three vols., ed. Y. Shaviv (Alon Shevut: Zomet Institute, 1991).

Rabbi Waldenberg's medical responsa were published in *Tsits Eli'ezer*⁴³ alongside his thousands of responsa on other topics. The first volume of this series was published in 1945, the second in 1947, and the third in 1951, but his real involvement in medicine and halacha really began with the fourth volume, published in 1954, and continues to this day. Nearly one-fifth of his responsa is devoted to medicine and halacha, covering a wide range of topics: the status, obligations, and license of the physician, pregnancy termination, fertility treatments, sex-change operations, organ transplants, the terminal patient, psychiatry, medical experiments on human subjects, autopsies, child abuse, limited resources, determination of death, and other, purely halachic subjects, such as medical treatment on Shabbat and festivals, prayers and blessings relevant to the patient and the physician, kashrut, circumcision, and smoking.

Rabbi Waldenberg is one of the world's leading halachic authorities. His responsa are comprehensive and his positions independent, based on sources. He does not shrink from fierce halachic controversy even when it involves other leading world authorities, such as his sharp debate with the late Rabbi Moshe Feinstein on pregnancy termination.⁴⁴

4. No'am: Platform for Clarification of Halachic Problems

The first issue of *No'am* was published toward the end of the 1950s and devoted considerable space to questions about fertility treatments. The most important article, on artificial insemination, is by Rabbi Shlomo Zalman Auerbach, the halachic authority of our generation and the leading decider on matters of halacha and practical medicine in Israel. To this day, this article is considered one of the corner-stone pieces of work in this sensitive area of halacha. Twenty-five issues of *No'am* have appeared to date.

5. Other Authorities

A number of other leading authorities were active during the State of Israel's first decade. Among them was the late Rabbi Moshe Feinstein in New York, whose responsa *Iggerot Moshe* is considered a fundamental halachic work and whose other publications, including hundreds of responsa on medicine and

43. Steinberg, *Hilchot Rofim u-Refu'a 'al pi Shu"t* (Jerusalem: Mossad ha-Rav Kook, 5738).

44. *Ibid.* pp. 33-45

halacha, have influenced halachic decision-making throughout the world; Rabbi Yitshak Weiss in Manchester, later the head of the *Eida Haredit Beit Din* in Jerusalem, whose many responsa on medicine and halacha were published in *Minchat Yitshak*, along with his other responsa;⁴⁵ Rabbi Shemuel ha-Levi Wosner of Bnei Braq, author of *Shevet ha-Levi*; Rabbi Ovadia Hadaya of Jerusalem, a member of the Supreme Rabbinical Court and author of *Yaskil Avdi*; and Rabbi Auerbach, whose halachic rulings and guidance form the basis of modern medical practice according to halacha until today. His articles were published in many different places and later many were collected and published in *Minchat Shlomo*. A detailed collection of abstracts on halachic decisions of Rabbi Auerbach was last published in *Assia*.⁴⁶

D. Second Decade (1958-1968)

1. First Bestseller: *Shemirat Shabbat ke-Hilchata*

In the mid-1960s, the first “bestseller” of modern halachic literature was published: Rabbi Yehoshua Y. Neuwirth’s *Shemirat Shabbat ke-Hilchata*.⁴⁷ Until its appearance, popular halachic works were organized according to the order of the *Shulchan Aruch*. *Shemirat Shabbat ke-Hilchata*, in contrast, organized the laws of Shabbat in an innovative, modern way, according to defined and indexed subjects. Its uniqueness lies not only in its easy-to-use format, but also in the thousands of references and comments throughout its chapters.

Of the first edition’s thirty-two chapters, eight are devoted to medical issues, including the laws of *piquah nefesh*, the mildly ill patient, illnesses, wounds, a woman in labor or who is breastfeeding, care of infants, Yom Kippur, medicine on Pesah, veterinary medicine, and miscellaneous medical topics “unrelated to the laws of Shabbat and Yom Tov.”

45. A summary by Steinberg of more than one hundred halachic responsa from *Minchat Yitshak* was published in *Sefer Assia*, vol. 2, pp. 29-57.

46. Steinberg, *Minchah le-Shlomo; Piskei ha-Grash”z Auerbach z”l be-Halachot Refu’a, Assia* 59-60, (1997) pp. 5-45; See also: M. Halperin, *Kavim Achadim le-Darko shel ha-Grash”z Auerbach be-Halachot Refu’a ve-Piquach Nefesh, Assia*, 57-58, (1997) pp. 17-61. See also: The first section of the article was translated; M. Halperin, “Rabbi Shlomo Zalman Auerbach’s Approach to the Question of Lifesaving Overriding Shabbat,” *JME* Vol. III No. 1 (1997) pp. 44-49.

47. Jerusalem: Feldheim Publishers, 1965.

The author, a leading disciple of Rabbi Auerbach, introduced hundreds of Rabbi Auerbach's halachic decisions – decisions that have since been immensely useful in the field of medicine and halacha and continue to guide religious medical centers and observant medical personnel worldwide. Although *Shemirat Shabbat ke-Hilchata* is much wider in scope than medical care on Shabbat, its influence on medicine and halacha is particularly noteworthy.

2. Jewish Medical Ethics

Toward the end of the 1960s, the pioneering work of the late Chief Rabbi of Great Britain, Lord Immanuel Jakobovits, was translated into Hebrew.⁴⁸ The original *Jewish Medical Ethics* was published at the beginning of the decade and, as mentioned earlier, introduced the concept of Jewish medical ethics. His book is a comparative halachic analysis of topics in medicine and includes chapters on the approach to the study of medicine; irrational medical beliefs; law and life; law and health, law and pain; ethics and health; the sick and their treatment; the dying and their treatment; controlling the generation of life; circumcision; and the physician's studies, status, professional ethics and privileges.

Jewish Medical Ethics is based on Lord Jakobovits' 1955 doctoral dissertation, which espoused the premise that one cannot entirely rely on the consciences of medical professionals as the authoritative guide to the moral dilemmas of our times. When moral or religious problems arise, the physician must consult experts in those areas, "just as a general practitioner consults a specialist when he meets a problem which is outside the scope of his general training and competence."

In Lord Jakobovits' opinion, "of all practical sciences, it is pre-eminently medicine with which Judaism, historically and intellectually, enjoys a natural kinship, and to which Jewish law is best qualified to address its reasoned, pragmatic rules of morality."⁴⁹

3. *Tora She-be'al Peh* and *Ha-Ma'ayan*

At the beginning of the decade, *Mossad ha-Rav Kook* in Jerusalem laid the foundations for a national annual conference on

48. *Ha-Refu'a Be-Yehadut*, a comparative, historical study on the relationship of the Jewish religion to medicine by Rabbi Dr. Immanuel Jakobovits.

49. Ibid. from the author's preface.

the Oral Torah. The sixth of these conferences took place in the auditorium of the Medical Academy in Jerusalem and was devoted to the Mishnaic order *Taharot* and topics in medicine and halacha. Leading halachic authorities in Israel participated along with prominent physicians and the guest lecturer, Lord Jakobovits. The proceedings of these conferences have been published under the title *Torah She-be'al Peh* and contain wide-ranging material on medicine and halacha (especially volumes 6, 18, 24, and 33).

During the same period, the quarterly *Ha-Ma'ayan* began publication. Hundreds of articles, monographs, and bibliographies on medicine and halacha have since appeared in its pages. Notably, several articles by Dr. Ya'aqov Levi, one of Jerusalem's veteran pediatricians, appeared with the intent of increasing cooperation between halachic authorities and physicians – no minor goal in those days.⁵⁰

E. Third Decade (1968-1978)

1. The Dr. Falk Schlesinger Institute for Medical-Halachic Research

A number of medical-halachic research institutes were founded in Israel during this decade and are still in operation today. Founded in the late 1960s, the Dr. Falk Schlesinger Institute for Medical-Halachic Research at the Shaare Zedek Medical Center in Jerusalem was among the first of them and was named after the late director of the hospital.

The uniqueness of The Schlesinger Institute lies in the joint activity of leading physicians and researchers together with well-known outstanding Torah scholars. This special combination enables the institute to carry out its research and educational goals with professionalism and expedience. Prof. Avraham Steinberg, the first director of The Schlesinger Institute⁵¹ and a member of the board until today, exemplifies the mix of clinical experience and extensive medical understanding together with exceptional torah knowledge.

Within this framework The Schlesinger Institute carries out original research in medical halacha, religious and academic education on these topics and publishes two world-renowned journals: The quarterly *Assia* in Hebrew and *JME* (Jewish Medical

50. A full bibliography of Dr. Levi's articles appeared in *Sefer Assia*, vol. 5, pp. 315-319.

51. From the day of its establishment until 1981

Ethics) in English. The Institute's research topics are taught in depth not only in Torah centers but also in the international academic and judicial community. In addition State Legislatures⁵² expressed much interest in halachic declarations that occurred in Israel and in the last two decades worldwide public interest has increased in the field of Jewish medical ethics concerning topics of life and death.

The Institute also runs an International Responsa Project (IRP) through which medical-halachic questions are posed to professionals by e-mail,⁵³ fax,⁵⁴ telephone⁵⁵ and mail.⁵⁶

2. *Assia*

The first *Assia* journal in the *Assia* series was published in 1970. The goal of the series was defined in the journal's introduction: "To provide for those interested and connected to this field (medical and halachic), the problems, solutions and thought processes in medical ethics of those Rabbis and doctors that have dealt with these problems. The intention is to present only relevant, up-to-date articles previously printed in different places not specifically related to medicine and halacha."

The first issue was published under the name "publications on topics of halacha and medicine," and contained eleven abstracts, without original articles. The second issue was published in February 1971 and was the first to be named "*Assia*." It appeared in the present format and included original articles, abstracts and bibliographical references to further sources. *Assia* – the journals name – means "physician" in Aramaic. Next to the journal's title appears the Aramaic words "*Asi Chigartach*" – "physician heal your own defect," in other words, 'physician, start by healing yourself, not only physically but ethically.'

Until today 72 issues⁵⁷ of *Assia* have been published in which have appeared close to a thousand professional articles and

52. See *JME* Vol. 1, no.2 (1989) p. 56

53. irp@medethics.org.il

54. Fax no. +972-2-652-3295

55. Tel. no. +972-2-655-5266 (work hours) and in the evenings +972-52-602-349

56. The Schlesinger Institute, P.O. Box 3235, Jerusalem 91031, Israel

57. After the 30th journal appeared and the departure of the Institute's founder and editor – Dr. Steinberg – Dr. Mordechai Halperin took over the position, editing *Assia* and managing the Schlesinger Institute, and continues this work until today.

bibliographies.⁵⁸ As a result of the journal's success, nine volumes of *Assia* were published including a new edition of essays with an index. These essays deal with a variety of topics, including: scientific, legal, ethical and halachic aspects of cloning, determination of death, heart transplantations, truth-telling to the dangerously ill patient, halachic and medical aspects of HIV, psychiatry and halacha, the selling of organs, the cessation of medical treatment and euthanasia, initial counseling for a juvenile with homosexual urges, smoking and life expectancy, coercive medical treatment, the surrogate mother, medical dilemmas of hospital nurses and naturally, practical halachic principles connected to the obligation to save human life.

3. *Moriah*

The first volume of the monthly *Moriah*, a journal of halacha and philosophy, appeared in the winter of 1969, published by the Movement for the Spreading of Torah (*Tenu'a Le-Hafatzat ha-Torah*) and later by The Jerusalem Institute. *Moriah*, which has now been in publication for almost thirty years, not only brings together topics of medicine and halacha but includes a wide variety of topics on halacha and Jewish thought. A number of important articles on medicine and halacha have appeared in its pages, most notably an article by Professor B. Lunenfeld *et al.* on a medical solution to the problem of "religious barrenness,"⁵⁹ which was controversial when it appeared but today is accepted worldwide.⁶⁰ A special article by Rabbi Auerbach on practical rules in the laws of saving life also appeared in *Moriah* and still serves as a halachic basis for guiding physicians on Shabbat and festivals.⁶¹

58. One of the most important bibliographic keys in *Assia* is the reference index of Rav Meir Wunder. As of 1981, this reference index, covering a full year of medical-halachic literature, appears in almost all of the *Assia* books. The bibliography is divided according to subjects with a short extract of the article's topic and a detailed index of the subjects and the authors.

59. B. Lunenfeld and N. Birnbaum, "Tippul be-Akarut 'eqev i-Hat'ama bein Yemei ha-Poriyut u-Zeman ha-Tevila," *Moria* 2, nos. 1-2 (1970) pp. 48-52

60. See A. and B. Lunenfeld, "Ha-Ma'avaq be-Akarut: Eqronot ha-Tippul ha-Terufati li-Gerimat Biyyuts," *Mada* 25, no. 2 (1981) pp. 72-77.

61. Raabi Shlomo Zalman Auerbach, "Beirurim u-Sefeiqot be-Inyan Piquach Nefesh Docheh Shabbat," *Moria* 3, nos. 3-4 (1971) pp. 10-36.

4. *Mahanayim*

In 1970, two full volumes of *Mahanayim*,⁶² the Army Chief Rabbinate's monthly journal, were devoted to medicine in Judaism. They included articles by leading figures such as then Chief Rabbi of the Israel Defense Forces, General Shlomo Goren; Professor Yehoshua Leibowitz; Professor David Flusser; Professor Y. Zilberstein; and Lord I. Jakobovits. Despite the high level of the publication it was not widely circulated. Seventeen years later, the monthly journal, *Skirah Chodshit (overview of the month)* published an up-to-date article on modern medicine through the eyes of halacha for Israeli Army Officers.⁶³

5. Pathology and The Talmud

The Talmudic sages excelled in their knowledge of anatomy and pathology, and they paved the way in theoretical pathology one thousand years before its development in modern medicine. Some spent many years studying human and animal anatomy and pathology. Rav, one of the greatest *Amoraim*, said of himself: "I spent eighteen months with the shepherds in order to learn which blemishes are permanent and which are transitory."⁶⁴

The Talmudic sages were also among the first to perform human autopsies and embryological and gynecological examinations, and to take gastro-intestinal and other samples – all in addition to numerous anatomical and pathological examinations for determining the kashrut of animals.⁶⁵

A wide range of pathological conditions are described in the Talmud, some of them quite rare. Professor Steinberg's *Ha-Patalogia ba-Talmud* brings together halachic, medical, and historical information, explaining the pathological knowledge of the Talmudic sages and comparing it with both ancient and modern medicine.⁶⁶ The book is a valuable asset for those proficient both in medicine and halacha.

62. *Machanayim*, 122 & 123, "Hotza'at Tzavah Hagganah Le-Yisra'el", *Ha-Rabbanut Ha-Tzv'ait Ha-Rashit*, 1970

63. M. Halperin, "Ha-Refu'a ha-Modernit be-Re'i ha-Halacha", *Skirah Chodshit*, Vol. 34 Issue 6, (1987) pp. 33-44

64. *Sanhedrin*, 5,2

65. For a detailed bibliography see Steinberg's preface above, pp. 5-6.

66. Steinberg, *Peraqim be-Patologia ba-Talmud u-ve-Nosei Keilav* (Jerusalem: Schlesinger Institute, 1975)

6. *Lev Avraham*

In 1976 the first volume of *Lev Avraham*⁶⁷ appeared. Its author, Professor A.S. Avraham, is a specialist in internal medicine (Director of Internal Medicine, Shaare Zedek Medical Center) and is exceptionally knowledgeable on the topic of medical halacha. The book brings together medical halachot under one roof and organizes them by subject in separate chapters. To facilitate easy reading the author prepared a detailed contents page at the beginning of the book in addition to a full index at the end. In a short time the first edition of *Lev Avraham* ran out and two additional editions were printed. At the end of the decade the second volume of *Lev Avraham* was published. Together, both volumes contain 64 chapters on a variety of topics, from medical-halachic definitions of the sick person and halachot connected to his day-to-day life, to laws concerning the fertility process and special operations and the painful topic of euthanasia.

7. Other Publications

Other noteworthy publications during this decade include; Dr. David Margaliyot's *Derech Yisrael bi-Refu'a: Yihuda ha-Musari mi-Meqor Yisrael*,⁶⁸ *Ha-Madrach ha-Refu'i lefi ha-Masoret ha-Yehudit*, edited by Professor L. Vishlitzky.⁶⁹ *Hilchot Rof'im u-Refu'a*, which contains a summary of the first 112 medical responsa from the thirteen volumes of *Tsits Eli'ezer*.⁷⁰ The book contains 12 sections: halacha for the doctor and for medicine, laws pertaining to medicine on Shabbat, festivals and fast days, women and fertility, surgery and organ transplantation, psychiatry, medicine and kashrut, blessings and prayers surrounding death, and a variety of additional topics such as triage and the allocation of scarce resources, medical experimentation, medical confidentiality, the authority and status of the doctor and more.

67. A.S. Avraham, *Lev Avraham, Hilchot Refuah le-Choleh ve-le-meshamesh*, Two volumes (Jerusalem: Feldheim Publishers, 1976).

68. Jerusalem: *Ha-Akademia li-Refu'a*, 1970.

69. Jerusalem: *Yad ha-Rav Herzog*, 1977.

70. Steinberg, *Jewish Medical Law; A Concise Response*. Compiled and edited from the *Tsits Eliezer* by Avraham Steinberg M.D. Translated by David Simons M.D. (Gefen Publishing, Jerusalem, California 1980.)

F. Fourth Decade (1978-1988)

The scope of this essay does not allow for a complete listing of all the events and publications in medicine and halacha since 1978, therefore we will examine only a sample.

At the forefront of our sample lie the two monumental sets that were published during this decade: *Nishmat Avraham* on the four sections of the *Shulchan Aruch* and *The Medical-Halachic Encyclopedia*.

In the world of modern halacha there are two accepted models for ordering current halachic literature. One is arrangement according to the order of the *Shulchan Aruch*, the accepted approach for the past five hundred years. The second is arrangement of topics defined according to contemporary methods, in which the most useful structure is the encyclopedic one. The *Nishmat Avraham* is built on the classic model whilst *The Medical-Halachic Encyclopedia* is built on the second one.

1. *Nishmat Avraham*

As aforesaid, *Nishmat Avraham*⁷¹ is based on the classic model – the arrangement of rules and laws according to the *Shulchan Aruch*. Highly useful for scholars proficient in the *Shulchan Aruch*, this order provides an overall collection of halachot including new halachic rulings of Talmudic giants. The order also allows for the building of a syllabus based on the order of the *Shulchan Aruch*'s paragraphs. Its disadvantage however, is the difficulty for those not fluent in the *Shulchan Aruch*. Professor A.S. Avraham, the author of the set, solved this problem well by granting his reader the advantages both models, adding a very detailed contents page at the beginning of the book and a sophisticated index at the end. These tools facilitate speedy access to the required topic for those unfamiliar with the paragraph structure of the *Shulchan Aruch* itself.

The contents provides the reader with a unique collection of laws, compiled from amongst the wellspring of halachic sources including hundreds of new and innovative halachic rulings that were collected personally by the author from great *poskim* from Israel and around the world including, first and foremost, Rabbi

71. A.S. Avraham, *Nishmat Avraham, Hilchot Cholim, Rofim ve-Refuah*, 6 Volumes, (Jerusalem: Schlesinger Institute, 1983-2000). The first two volumes were originally published by Vagshal Publishers, Jerusalem.

Shlomo Zalman Auerbach ז"ל. There is almost no halachic topic that is not discussed within the set's contents. This book is a must for any halachic person or professional within the field of medical-halacha.

2. *The Medical-Halachic Encyclopedia (Hebrew Edition)*

At the end of the decade *Ha'Entsiklopedia Ha-Hilchatit Refuit*⁷² appeared built on a similar format to the *Talmudic Encyclopedia*. *The Medical-Halachic Encyclopedia* includes a variety of topics connected to medicine and treatment of the sick from the perspective of physician and patient, discussing not only routine issues but exceptional topics as well. The encyclopedia contains all the medical-halachic information found in the sources, from Biblical and Rabbinic literature to present day *poskim* and researchers. The author includes his own comments and clarifications from the fields of science, medicine, philosophy, ethics and law. Consequently, the encyclopedia serves today not only as a medical-halacha study guide but also as a source-book containing tens of thousands of bibliographic references required for research and in-depth study.

The following topics are included in the set: paternity, suicide, autonomy and free choice, hospital, genetics and heredity, informed consent, abortion, artificial insemination, organ transplantation, the elderly, the ill, mummification, medical mistakes and negligence, pain and suffering, operations, birth, kashrut and Shabbat, the study of medicine, religion and science and medical experimentation.

3. Israeli Law and Jewish Law

The Foundations of Law Act of 1980 was a turning point in the relationship between Israeli law and Jewish law. It nullified the anachronistic ties to British and Ottoman law, replacing them with a connection to Jewish law. The act stipulated that, "if the court faces a legal question requiring a ruling and does not find the answer in the legislation, in precedents, or by analogy, it shall be decided in light of the Jewish tradition's principles of freedom, justice, uprightness and peace."⁷³

72. A. Steinberg, *Medical Halachic Encyclopedia*, 6 Volumes, (Jerusalem: Schlesinger Institute, 1987-1998). Prof. Steinberg received The Israel Prize for his unique work in creating *The Encyclopedia*.

73. Foundations of Law Act of 1980, section 1. Likewise, para. 46 of The Palestine Order In Council, 1922-47, which made the law in Palestine and later in the State of

Two approaches to this act are seen among Israeli judges:⁷⁴ those with little background in Jewish law usually interpret the act in its limited sense, sometimes continuing to adhere to the British legal method which the act was meant to reject, and those with knowledge and analytical expertise in Jewish law make practical use of the law. Among the latter, one of the most outstanding is Professor Amnon Carmi,⁷⁵ president of the Society for Medicine and Law in Israel.

4. Judge Amnon Carmi and The Society for Medicine and Law in Israel

Judge Amnon Carmi was extensively involved in the fields of medicine and law both in Israel⁷⁶ and around the world.⁷⁷ An outstanding figure in these fields, Prof. Carmi had the opportunity to evaluate and to recognize the value of the code of medical ethics found in Jewish law.

Judge Carmi passed on this message to the judicial and medical community in Israel through several frameworks:

- The IAML held and still holds seminar evenings and many talks on current topics of medicine and law wherein the topic of Jewish law is a significant part of the professional discussion.
- The official publication of The Society for Medicine and Law in Israel, *Refu'a u-Mishpat*, edited by Prof. Carmi, appeared in the Spring of 1986. Containing many articles on medical

Israel subject to English law, was canceled in section 2. Therefore, in the event of a disagreement over a ruling in a legal lacuna, it is appropriate that the decision not be made according to the views of one or another judge but rather according to the Foundations of Law Act. See Halperin, "*Hebbetim Mishpatiyim le-Or Hoq Yesodot ha-Mishpat 1980*," *Assia* 49-50 (1990) pp. 83-84.

74. *Kuppat Am Bank vs. N. Hendles & Others* 34 (iii) P.D. 58 (1978); 35 (ii) P.D. 785 (1980)

75. Prof. Nachum Rakover, deputy legal advisor to the Government, contributed greatly to the increased accessibility of Jewish law to Jurists by publishing tens of books and indexes enabling judges and lawyers to reach halachic sources concerning a wide variety of modern legal subjects. The bibliographical list is available through The Library of Jewish Law, P.O. Box 7483, Jerusalem 91074.

76. The Society for Medicine and Law in Israel was established in 1972 on Prof. Carmi's initiative. Its membership, numbering thousands, includes judges, lawyers, doctors, and researchers.

77. Prof. Carmi initiated, *inter alia*, the *International Journal for Medicine and Law*, the first issue of which was published in Israel in 1979. In 1982, the journal was taken over by the Springer Publishing House (Heidelberg) and made a quarterly. Since 1985, it has appeared every second month. Throughout, Carmi continued to serve as editor in chief.

ethics and halacha from the first until the current 27th issue, the variety of topics covered in this journal are enough to fill a complete book.

- *Rashlanut Refu'it be-Yahadut u-ve-Yisra'el*,⁷⁸ (Medical Negligence in Judaism and in Israel) was written in conjunction with Bar Ilan University's computerized Responsa Project and includes hundreds of quotations and sources from traditional Jewish literature as well as from legislation and rulings of the State of Israel.

5. Technological Halachic Institutes

Two technological halachic institutes were established during this decade: the Jerusalem Institute of Technology, a project initiated and established by Israel-Prize-winning physicist Professor Ze'ev Lev,⁷⁹ and the Zomet Institute in Alon Shevut, Gush Etzion,⁸⁰ established by the engineer Rabbi Yisrael Rosen. Both these institutes have developed technological solutions for halachic difficulties on Shabbat and festivals. Israeli hospitals make use of these technological developments.⁸¹

Three volumes of the Jerusalem Institute of Technology's *Ma'aseh Hoshev* deal with medical-halachic matters,⁸² and Zomet's *Tehumin* deals with questions of science, society, and the State, regularly devoting space to medicine and halacha.

6. Additional Publications

Other books and periodicals published during this period are *Halacha u-Refu'a*,⁸³ *Ha-Refu'a le-Or ha-Halacha*,⁸⁴ *Emeq Halacha*

78. Amnon Carmi and Amiram Sagiv (Haifa: Tamar Publishing 1986).

79. Rabbi Levi Yitshak Halperin, head of the Halacha Department of the Jerusalem Institute of Technology, an outstanding Torah scholar, till this day takes on the work of the Institute as one of his many tasks.

80. Zomet (*Tsivtei Mada' u-Tora*) opened in Alon Shevut in 1977 as part of Yad Shapira. See I. Warhaftig in the introduction to *Tehumin*, vol. 1 (1980).

81. The Shaare Zedek Medical Center in Jerusalem makes extensive use of the inventions developed by the Jerusalem Institute of Technology. The Health Fund's hospitals purchased a system developed by Zomet for computer use on Shabbat and festivals. See Y. Rosen, "Pitronot Hilchatehniim le-Shimmush be-Shabbat be-Mahshev le-Qelitat Holim," *Sefer Assia*, vol. 4, pp. 135-38.

82. Rabbi Levi Yitshak Halperin (Head of the Halacha Department of the Jerusalem Institute of Technology), *Shu"t Ma'aseh Hoshev* (Jerusalem: Jerusalem Institute of Technology, 5757).

83. *Halacha u-Refu'a: Qovets Halacha be-Inyanei Refu'a*, five volumes, ed. Rabbi Moshe

Assia,⁸⁵ *Bi-Shevilei ha-Refu'a*,⁸⁶ *Me'orot*,⁸⁷ and *Ha-Refu'a ba-Meqorot*⁸⁸. At the same time the *Ha-Refu'a*⁸⁹ journal published many interesting articles on medicine and halacha, some of them written by Rabbi Shlomo Goren, the former Chief Rabbi of Israel, and the journal for medical problems, *Meida' la-Rofeh*,⁹⁰ published a regular column entitled "What Do Our Sages Say about Medicine?"

7. The Jakobovits Center for Jewish Medical Ethics

The Jakobovits Center for Jewish Medical Ethics was established in the Faculty for Health Sciences at Ben-Gurion University of the Negev. The project's central initiator was Lord Rabbi Immanuel Jakobovits, for whom it was named.

The story is told that Lord Jakobovits turned to the medical center in Jerusalem with to set up a center. The paternalistic authority in charge of Jerusalem medicine refused to accept the offer, stating that they did not want the involvement of non-medical elements in the medicine faculty. As a result the offer and its budget was offered to the University of the Negev.

A few years later, Jerusalem followed suit initiating a number of courses in medical ethics – Jewish and general at the Hebrew University and Hadassah's Medical School.⁹¹

Herschler (Jerusalem, Chicago: Regensberg Institute).

84. *Ha-Refu'a le-Or ha-Halacha, Mechkarim ve-Birurim be-Nosim Shonim be-Refuah*, 4 volumes & 2 Issues, *Le'Kidum Publishers*, The Israeli Bio-technology Institutes, edited by faculty members of the Schlesinger Institute, (Jerusalem: Schlesinger Institute, 1980-1985).

85. *Emeq Halacha Assia: She'elot u-Teshuvot be-Inyanei Refua*, 2 volumes. First vol. ed. by M. Halperin (Jerusalem: Schlesinger Institute and Emeq Halacha Foundation, 1986); second vol. ed. by A. Steinberg (New York: Mikhael Sharf Foundation at Yeshiva University, 1989).

86. *Bi-Shevilei ha-Refu'a: Ha-Refua le-Or ha-Halacha ve-Hashqafat ha-Yahadut*, 10 issues (*Qiryat Tsanz: Laniado Hospital*, 1979-93).

87. *Me'orot: Riv'on ha-Rabbanut ha-Rashit le-Yisrael le-Inyanei Halacha, Aggada, Mussar ve-Yahadut*, 3 issues, ed. by Israeli Chief Rabbinate (Jerusalem: Heichal Shlomo, 1980-81). The second issue was devoted to medicine and halacha.

88. M. Assaf, *Ha-Refu'a ba-Meqorot: Leqet mi-toch ha-Tanach, Mishna, Talmudim, Midrashim, Zohar, Rambam, ve-Rishonim* (Jerusalem: Reuven Mass Publishers, 1983). Similar in concept to *Midrash ha-Refua* but does not contain as many ancient sources.

89. *Ha-Refuah*, Journal of the Israeli Medical Association.

90. Published by the medical wing of *Kuppat Holim ha-Kelalit*. ISSN 0334-4169.

91. The lecturers for these courses are among the leaders in medicine and Judaism and include Prof. A.S. Abraham, Dr. M. Halperin, Prof. Shemuel Kottek, Prof. Avraham Steinberg, and Rabbi Yigal Shafran.

8. Special Lectures for Physicians

It was during this decade that leading halachic authorities offered special lectures throughout the country for physicians from all backgrounds and lifestyles. Lecturers in Jerusalem included Rabbi Valdenberg, who gave a regular lecture for the doctors at Shaare Zedek Medical Center, and the *rosh yeshiva* of Yeshivat *Merkaz ha-Rav Kook* (and later Chief Rabbi of Israel) Rabbi Avraham Shapira. The Chief Rabbi of Tel Aviv (and later *Rishon le-Tsiyyon*) Rabbi Ovadia Yosef⁹² gave lectures in Tel Aviv, and Rabbi Yitshak Shapira from Netanya lectured in the north. To this day Rabbi Zilberstein⁹³ gives a monthly lecture for medical professionals.⁹⁴

G. Fifth Decade (1988-1998)

1. International Conferences in America and Israel

The fifth decade is marked by a quantum leap in medicine and halacha both in Israel and abroad. In 1989, The First International Conference in Medicine and Halacha took place in New York.⁹⁵ Guest speakers included leading Israeli experts in the field.⁹⁶ As a result of the success of the first conference four more conferences were held in New York.

92. Harav Ovadia Yossef, b.1920, Baghdad, Sephardi Chief Rabbi 1973-1983 and received the Israel Prize in 1970. By 1945 he was appointed as a member of the Sephardi Beit Din of Jerusalem. Between 1947-1950 he served as the *Av Beit Din* in Cairo and on his return to Israel served in the Beit Din of Petach Tikva, Jerusalem and the Court of Appeal. In 1968 he was appointed as the Chief Rabbi of Tel Aviv. His many written works contain hundreds of answers and halachic decisions on medical-halachic issues.

93. *Rosh kollel* of Beit David in Holon and son-in-law of R. Shalom Y. Eliashiv, considered the leading halachic authority of the Lithuanian world since the passing of Rabbi Auerbach. In the fourth decade *Torat Ha'Yoldot*, the joint work of Rabbi Zilberstein and Dr. Y. Rothschild (director and initiator of *Ma'ainei Ha-Yeshu'ah* Hospital in Bnei Brak) was published. *Torat Ha-Yoldot* contains a vast amount of material on the laws of new mother and the medical team treating her. A second edition appeared at the end of the decade.

94. The lectures are circulated to participants only. Some of the lectures have been published in various places for example, *Be-Shvilei Ha-Refu'a* and *Assia*.

95. The First International Conference in Medical Ethics and Halacha, held by the AOJS in New York, January 1989.

96. The Book of the Conference entitled *Medicine and Jewish Law*, was published a year and a half later, edited by Prof. F. Rosner, (Northvale, NJ; London: Jason Aronson Inc.1990).

A year later the State University of New York (SUNY) held an international conference on medical ethics and Judaism to which four Israeli lectures were also invited.

In the meantime The Hebrew Academy of San Francisco began to hold yearly conferences on Jewish Medical Ethics. These conferences, to which top lecturers from around the world were invited, have since run every winter until the present day.

In Israel The First International Conference on Medicine, Ethics and Halacha⁹⁷ was held at the Shaare Zedek Medical Center,⁹⁸ Jerusalem, in the summer of 1993. Three years later the second international conference was held in Jerusalem with the participation of hundreds of Rabbis, jurists and halachicists from Israel and around the world.

Conferences also took place in Europe amongst them the United Conference on the Jewish Approach to Medicine in Manchester, England, November 1995.

Most of the lectures at these conferences were either filmed or recorded such that one is able to acquire audio and video tapes of the lectures by appealing directly to the organizers.

2. Jewish Medical Ethics (JME)

At the beginning of the decade the JME journal on Jewish medical ethics was published in English.⁹⁹ The journal, with a world-wide distribution, includes a variety of material in the fields of medicine and halacha with an emphasis on ethical aspects. To date seven issues of the journal have been published in four volumes.

3. Multimedia Halacha and Medicine

A division of medicine and halacha has been established as part of the Religious Council of Jerusalem.¹⁰⁰ This division has produced

97. Held by The Falk Schlesinger Institute for Medical Halachic Research at The Albert Einstein Medical School, New York.

98. A Hebrew and English edition of the book of the conference was published in 1996 and contains the scientific, ethical and legal background as well as halchic answers by great *poskim* to questions on practical medicine as was presented throughout the conference.

99. Jerusalem: Schlesinger Institute, Shaare Zedek Medical Center.

100. As rabbi of the department, Rabbi Shafraan was appointed director. He has given an elective course in Jewish medical ethics at the Jerusalem Medical School since the late 1980s. In 1992, a seminar day for Rabbis and physicians on the topic of "Gynecology, Fertility and Newborns in Halachic Perspective" initiated by Dr. Chana Katane, was held by the Department. Topics included: the fetus and its status,

a number of films illustrating fundamental questions in medical ethics such as forced medical treatment, preservation of life vs. quality of life, and delivering a fetus following the mother's brain death. These films have been presented in professional as well as public forums as excellent illustrative aids to issues of medical ethics in general, and Jewish medical ethics in particular.

The Nehorai Institute in Bnei Braq has developed a computer database devoted to medicine and halacha,¹⁰¹ combining a database of thousands of halachic concepts with sophisticated search capabilities¹⁰² The Nehorai Institute also ran a medical-halachic e-mail discussion group.¹⁰³

With the development of the Internet, several web-sites have been set up to serve Jewish medical ethics, such as The Schlesinger Institute's www.szmc.org.il/machon and www.medethics.co.il¹⁰⁴ which include links to other sites.¹⁰⁵

4. Precedents in Medicine and Law

In his introduction to *Pisqei Din Refu'a u-Mishpat*,¹⁰⁶ Israeli Supreme Court president Judge Meir Shamgar wrote that "the bringing closer of different theoretical professional spheres takes on added importance in our times... when scientific progress gives rise to many ethical problems, making interdisciplinary discussion essential." The importance of this book is twofold. It is devoted to law as it relates to medicine, and it is accompanied by professional commentary on the rulings from different perspectives.

5. Yael Shefer vs. The State of Israel

premature babies and newborns, family planning and fertility treatment. These lectures were published as a book in 1993 by the Department for Medicine and Halacha and edited by Rabbi Yoel Katane. A similar second conference was held in 1998 and the book that compiles the lectures was published in 2000, edited by Rabbi Yoel Katane.

101. The Nehorai Institute is headed by Rabbi Binyamin Weiss, a unique figure who combines great breadth in halacha with medical knowledge and high-tech experience.

102. For more details see *Assia*, 61-62 (1998) p. 42; *JME* 3, no.1 (1997) p. 57

103. Until recently, the address of the chat group at toranet.medico-halacha@actcom.co.il was available for use.

104. The sites enable free downloading of articles on Jewish Medical Ethics as well as the ordering and payment of professional literature.

105. The links are interesting and updated.

106. *Pisqei Din Refu'a u-Mishpat* (Tel Aviv: Israel Association for Medicine and Law in conjunction with the Israeli Medical Union and the Lawyers' Association Council for the Tel-Aviv Region, 1989).

The Supreme Court of Israel's ruling on the case of Yael Shefer vs. State of Israel was explained by the judge in the case, then Deputy President Menachem Elon, in *New Horizons in Medical Ethics: Decision of the Supreme Court of Israel in the Shefer Case*.¹⁰⁷ The case involved a Tay-Sachs patient whose mother, on her behalf, appealed to the Supreme Court for permission to withhold intravenous medication or assistance in respiration when her daughter's condition reached the stage where she would require them. The regional court had rejected the first plea, and the Supreme Court rejected the mother's appeal.

Professor Elon's decision analyzes the Basic Law: Human Dignity and Freedom and the concept of a "Jewish and democratic state" upon which the Basic Law is based. It deals with highly controversial concepts such as the definition of the enlightened community, the right to die, and dying with dignity. As required by the Basic Law, Professor Elon relied on his vast knowledge of Jewish tradition to define the concept of "the values of a Jewish state" laid down by law.

After the court's verdict was translated and published in English,¹⁰⁸ in-depth material became available for those interested in life and death issues in the fields of medicine and law, both in Israel and around the world.

6. The Value of The State and *The Patient Rights Act*

What are "the values of the State of Israel as a Jewish democratic state" that anchor the *Basic Law: "Human Dignity and Freedom"*?

The answer to this question is not clear-cut because it involves many differing interpretations. Nevertheless there have been many laws enacted that have their roots in Israeli tradition including the Foundations of Law Act of 1980, that openly declares the connection to Israeli tradition.

When the Basic Law was brought before the Knesset for its final reading in 1992, the chairman of the Committee for Constitution and Law said:

This law was created with the understanding that we

107. Civil Appeal 88/506, Yael Shefer vs. The State of Israel 48. Prof. Elon, The First International Conference on Medical Ethics and Halacha, (Jerusalem: Schlesinger Institute, 1996) pp. 21-118,

108. M. Elon, *New Horizons in Medical Ethics* (Jerusalem, Schlesinger Institute, 1997).

needed to create a wide consensus among all parties in the House [Knesset]. We were aware that we could not pass a basic law anchoring the values of the State of Israel as a Jewish and democratic state unless we could achieve a wide consensus among all the parties... The law opens with the declaration that it is meant to protect human dignity and freedom in order to anchor in law the values of the State of Israel as a Jewish and democratic state. In this sense, already in the first paragraph the law determines that we see ourselves as **obligated to the values of Jewish tradition** – since this is given explicit positivist expression – the values of the State of Israel as a state that is Jewish as well as democratic. The law defines some of the basic freedoms of the individual, **none of which stands in opposition to Jewish tradition or to the world of values prevalent and accepted today in Israel by all parties of the House.**¹⁰⁹

This was not a new approach, and it is remarkably consistent with the words uttered by Knesset member Hayyim Zadok (later Minister of Justice) in 1961 during the debate on *Ability to Stand Trial and Representation Act* of 1962:

The law book of the State of Israel, from the beginning of its existence and until today, is sown with laws pertaining to the realm known as “matters of personal status,” which are a **combination** of the principles of Jewish Law together with modern legal principles...

Throughout our system of legislation we have strictly adhered to the religious laws with regard to marriage and divorce, and we have taken care not to harm them. We have also taken care not to legislate laws that would in any way contradict any religious commandment.¹¹⁰

A study of the *Patients' Rights Act* confirms this assertion and reveals that at least two sections of this act, 15(2) and 15(3), are genuinely rooted in Jewish tradition.¹¹¹ Section 15(2) is

109. *Proceedings of the Knesset*, vol. 125 [5752], pp. 3782-83.

110. First reading, *ibid.*, vol. 32, p. 156.

111. Patients' Rights Act 1996, *Sefer ha-Huqqim* 1591, 23 Iyyar 5756 (5/12/96).

fundamentally based on the autonomy of the individual and his conscious retroactive consent and has its source not only in common sense but also in ancient halachic literature.¹¹² Section 15(3) determines that:

Under circumstances of medical emergency the caregiver is permitted to administer urgent medical treatment even without the conscious consent of the patient if, owing to the nature of the emergency – including the physical or mental state of the patient – his conscious consent cannot be obtained; additional medical treatment will be administered with the consent of three doctors, unless the circumstances of the emergency do not permit this.

Clearly, this is nourished by the values of Jewish tradition, which accords human life priority on the ladder of values. It is interesting that during the course of the preparation of the Act, there was wide consensus on this section's importance, regardless of the participants' personal relationship with halacha.

7. Mutual Enrichment

Another development in this decade was the combination of medicine and halacha with other disciplines. For example, academic research projects in medicine and halacha abound in Israeli medical institutes and there is a constant demand for professional medical-halachic lectures at medical-legal conferences in Israel and abroad. Further, the Israeli Society for Medical Ethics is careful to study the halachic position on modern medical issues, legal and judicial books use principles of Jewish law in their professional discussions¹¹³ and the Dr. Zussman Institute of Legal Training for Judges as well as the Institute of Legal Training for Attorneys and Legal Advisors invite experts to deliver lectures on Jewish medical ethics.

This phenomenon is not limited to Israel. The development of the discipline together with growing public awareness has created a

112. M. Halperin, "*Hitnaggdut Horim le-Nittuah ha-Tinnoq ha-Mesukkan*," *Sefer Assia*, vol. 8, pp. 19-31.

113. For example: Shmuel Yellinek, *Holada Be-Avlah – Zechuyot Tviya'h ve-Pizuyim*, Ashley Publishers, Tel Aviv 1997, Amnon Ben Dror, *Immutz ve-Pondika'ut*, Kook Publishers, Tel Aviv 1994

situation where almost every related field has a symbiotic relationship with halacha.

The discipline has also penetrated public consciousness in Israel and abroad. On medical issues today, there is an almost automatic appeal to an expert in medicine and halacha for an opinion on an issue.

8. Pioneers in Jewish Medical Ethics

At the beginning of the State of Israel's Jubilee year an interesting book was published in the United States summarizing the international development of Jewish medical ethics. The book was entitled; *Pioneers in Jewish Medical Ethics*¹¹⁴ and is edited by Prof. Fred Rosner of New York, who is among the exclusive group who advanced this profession in the last decade. The book presents before the reader the key international figures in the world of medicine and halacha and gives a summary of their contribution to the field. Around half the people who appear in the book are physicians or talmudic scholars from Israel.

The work is not yet complete. There are still questions left unanswered in difficult life and death areas,¹¹⁵ and undecided arguments over the identity and lineage of a person in certain situations.¹¹⁶ Looking back however, over the professional development of this field during the last fifty years, it seems that the Israeli community has good reason for some modest pride.

*Source: ASSIA – Jewish Medical Ethics,
Vol. VI, No. 2, 2004, pp. 4-19*

114. Rosner F. (ed.), *Pioneers in Jewish Medical Ethics*, (Northvale, NJ; Jerusalem: Jason Aronson Inc., 1997).

115. "Ha-Noteh Lamut", A. Steinberg *Medical Halachic Encyclopedia*, Vol. 4; *Sefer Assia*, vol. 7, Section 2: *Keviya't Rega' Ha-mavet ve-Hashtalot Lev*.

116. See M. Halperin, *Terumat Chomer Genety be-Tipulei Puriut – Hebbetim Refui'm ve-Hilchati'm, Torah She-Ba'al Peh*, 33 pp. 101-115, (Mossad Ha-Rav Kook, 1992), and the footnotes on pages 109 and 113; *Assufat Ma'amarim Likrat Kinnus ha-Kenes ha-Beynleumi ha-Sheyeni le-Refu'a, Etikah ve-Halacha*, (Jerusalem: Schlesinger Institute, 1996), pp.321-327; A. Steinberg, *Shibbut Bnei Adam – Hebbetim Madayi'm, Musari'ym ve-Yehudi'ym, Assia* 61-62, pp.27-42 (1998).