

# Medical-Halachic Decisions of Rabbi Shlomo Zalman Auerbach (1910-1995)

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## Introduction

Rabbi Shlomo Zalman Auerbach was born in Jerusalem on 30 July 1910 (23 Tamuz 5670 in the Hebrew calendar) and died on 20 February 1995 (20 Adar 5755). He lived his entire life in the Shaare Chesed neighborhood of Jerusalem, where he raised his ten children. He never left the Holy Land, lived a simple and spartan life and devoted himself entirely to the study of the Torah and the performance and fulfillment of biblical and rabbinic commandments and precepts.

Rabbi Auerbach began teaching Torah at Yeshivat *Kol Torah* in 1949. Three years later he became the Dean (*Rosh Yeshiva*), a position he held until his death. Though recognized as one of the greatest rabbinic authorities of the twentieth century, he refused offers to become a judge in the Supreme Rabbinical Court and declined to become Jerusalem's or Israel's Chief Rabbi. He was loved and admired not only for his erudition in rabbinics and theology but also for his integrity and modesty. Throughout his life he was unpretentious and actively engaged in acts of charity and psychological support for the needy.

Rabbi Auerbach was totally free of politics. He had no material ambitions, did not seek power and glory, and shunned publicity. He was punctilious in his performance of obligations and commandments between himself and G-d and between himself and fellow human beings. He attended rigorously to Torah studies. He showed love and affection to every man, woman and child. He respected every Jew, religious and secular alike. He was accessible to anyone who needed his guidance and advice. His rabbinic rulings were based exclusively on halachic principles and not on intuition.

His advice and personal actions and behavior were refined by halacha and Jewish thought.

His last will and testament typifies Rabbi Auerbach's humble character and his respect and consideration for others. He entitled it *bakasha* meaning "request," rather than using the conventional term *tzavaah* meaning "instruction." He asked that his tombstone not be larger than those of his parents, that it not be inscribed with titles or praises and that it only indicate that he taught Torah at Yeshivat Kol Torah in Jerusalem. He requested that eulogies delivered at his funeral be brief so as not to burden the assembled people and that the speakers endeavor to stimulate the spiritual and religious feelings of the people in attendance. He emphatically asked that eulogizers refrain from lavish praise since such praise greatly pained him during his lifetime. He forgave all who committed any offense against him during his lifetime and asked forgiveness from anyone who felt that he had offended him. Finally, he asked his family to live together in peace and harmony.

These qualities, combined with enormous Torah knowledge and erudition, allowed Rabbi Auerbach to analyze and define halachic concepts as they apply to modern issues in medicine, technology, agriculture, economics and other areas. He never issued a ruling without a thorough investigation of the subject matter. He consulted experts to obtain a detailed and comprehensive understanding of the relevant facts before issuing his ruling. The sum total of these characteristics, personal qualities and halachic abilities made Rabbi Auerbach the widely recognized Torah giant and *posek ha-dor* (rabbinic decisor of the generation) that he was.

Rabbi Auerbach's books include *Interpretations on Shev Shemateta*,<sup>1</sup> *Meorei Aish*,<sup>2</sup> *Kovetz Maamarim Be'in'yanei Chashmal Be-shabbat*,<sup>3</sup> *Maadanei Eretz*, Part 1 on *Shevi'it*<sup>4</sup> and Part 2 on *Terumot*.<sup>5</sup>

A compilation of some of his many articles was published as *Responsa Minchat Shlomo* in 1986 by the Shaare Ziv Institute in Jerusalem. Several medical-halachic articles by Rabbi Auerbach were published in Hebrew periodicals such as *Noam*, *Sinai* and

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1. 1932, 2nd edition 1991, Shaare Ziv Institute, Jerusalem.

2. 1935, Jerusalem.

3. 1978, Institute for Science and Halacha, Jerusalem.

4. 1944, 2nd edition, 1992, Moriah, Jerusalem.

5. 1952, Jerusalem.

*Moriah*. Many of his medical halachic rulings are quoted by other authors in various books and articles in Hebrew periodicals such as *Assia* and *Hamayan*.

Most of Rabbi Auerbach's rulings were rendered orally and never formally published. However, many of his rulings involving medical subjects have been summarized by three of his outstanding disciples, Rabbi Yehoshua Y. Neuwirth, Rabbi Dr. Abraham S. Abraham and Rabbi Dr. Avraham Steinberg in their multivolume works. These are respectively *Shemirat Shabbat Kehilchatah*,<sup>6</sup> *Nishmat Avraham*,<sup>7</sup> and *Encyclopedia Hilchatit Refuit*.<sup>8</sup> This article is based primarily on these sources and is the first attempt to summarize Rabbi Auerbach's medical halachic rulings published by his disciples in authorized sources which he personally reviewed and approved. The reader is strongly encouraged, wherever possible, to consult the original Hebrew sources cited above.

## **The Beginning of Life**

### **a. Contraception**

Rabbi Auerbach allows a Jewish bride to use contraceptive pills prior to her marriage to ensure that she not menstruate on her wedding day.<sup>9</sup> It is preferable that she take the pills up to three weeks before the scheduled wedding. After she stops, she has her regular menstruation and should count five "unclean" and seven "clean" days.<sup>10</sup>

A Jewish physician is not ordinarily allowed to prescribe contraceptive pills for a sexually active unmarried woman.<sup>11</sup> In situations where Jewish law permits the use of contraceptives, the minipill is as acceptable halachically as regular contraceptive pills.<sup>12</sup> A woman who feels very weak after childbirth is permitted for a limited time to use contraceptive pills, even if her husband has not yet fulfilled the precept of procreation.<sup>13</sup>

Rabbi Auerbach also allows a woman who is fearful of having another episode of post partum depression to use contraceptives,

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6. 3 volumes, new and enlarged edition, *Moriah*, Jerusalem, 1979-1993.

7. 6 volumes, 2nd edition, Schlesinger Institute, Jerusalem, 1984-1996.

8. 6 volumes, The Schlesinger Institute, Jerusalem, 1988-1997.

9. *Nishmat Avraham*, *Yoreh De'ah* 193:1.

10. *Encyclopedia Hilchatit Refuit*, vol. 5, pp. 12-13.

11. *Nishmat Avraham*, vol. 4, *Even Haezer* 5:1.

12. *Ibid.* 5:13:2:3.

13. *Ibid.* 5:13:1.

even over the objections of her husband.<sup>14</sup> She may choose to become pregnant again since effective treatment is available for post partum depression and therefore she is not considered to be violating the prohibition against self-endangerment.<sup>15</sup> Where contraception is halachically permissible, the diaphragm is preferable to spermicides.<sup>16</sup> In a case where a baby may be born with a serious and even lethal genetic defect causing much suffering to the parents, it is permissible for the woman to use a diaphragm and the couple is not obligated to separate or divorce.<sup>17</sup> A woman who was raped is permitted to use the “morning after pill” or to have an emergency intrauterine device inserted within 72 hours to avoid pregnancy.<sup>18</sup>

#### **b. Fertility Testing, Artificial Insemination and Surrogate Motherhood**

Rabbi Auerbach allows the provision of sperm by a man for fertility testing, even if the husband has already fathered a son and a daughter.<sup>19</sup> It is preferable, if possible, to obtain the sperm sample by a method other than masturbation such as retrieval of sperm from the wife following cohabitation or even by the use of a condom.<sup>20</sup> A man with cancer should not freeze some of his sperm for possible future use even though chemotherapy or radiotherapy may make him sterile. However, this is not prohibited whether he is single or married.<sup>21</sup>

Rabbi Auerbach rules that artificial insemination using the husband’s sperm (AIH) is permissible, provided that there is no other alternative for the couple to have a child and provided that the sperm is not mixed with donor sperm.<sup>22</sup> Such AIH is permissible even during the period when the woman is ritually unclean (*niddah*) and forbidden to cohabit with her husband if it is impossible to perform AIH at another time.<sup>23</sup> The introduction of semen into the woman’s vagina during AIH does not render the

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14. *Ibid.* 5:13:2:8:4.

15. *Ibid.*

16. *Ibid.* 5:13:2:1.

17. *Ibid.* 5:13:2:8:5.

18. *Ibid.* *Choshen Mishpat* 425:1:20.

19. *Nishmat Avraham, Even Haezer* 22:9.

20. *Ibid.* 23:2.

21. *Ibid.* vol. 4, 23:1.

22. *Noam*, 1958, vol. 1, pp. 155-166.

23. *Ibid.*

woman ritually unclean.<sup>24</sup> A child born following AIH is considered to be the son of the sperm donor, i.e. the husband, in all respects.<sup>25</sup>

Rabbi Auerbach also rules that it is forbidden to inseminate a woman with sperm from a Jewish donor who is not her husband. If, however, this was done, the woman may continue to live with her husband even if he is a priest (*kohen*). The child born from this procedure is a doubtful bastard (*safek mamzer*).<sup>26</sup> If no other method is available to help a couple have children, it is permissible to use the sperm from a non-Jewish donor. The child born of such a procedure is Jewish and requires no conversion.<sup>27</sup>

In Rabbi Auerbach's view it is forbidden for a single woman to become pregnant by artificial insemination even if the sperm is obtained from a Jew.<sup>28</sup> It is also forbidden to separate male-producing sperm from female-producing sperm in order to choose the sex of one's offspring. However, in the case of x-linked diseases such as hemophilia, it is permissible to separate sperm to try to ensure the birth of girls who will be unaffected.<sup>29</sup>

Rabbi Auerbach opposes surrogate motherhood *a priori*. If, however, it was performed, both the genetic mother (i.e. egg donor) and the birth mother are considered mothers for halachic purposes.<sup>30</sup> If either the surrogate mother or the genetic mother is non-Jewish, the child must undergo full conversion to Judaism even if the surrogate mother herself converted during the pregnancy.<sup>31</sup> A firstborn male born following artificial insemination or in-vitro fertilization requires redemption like any other firstborn son.<sup>32</sup>

### c. Abortion

Rabbi Auerbach prohibits the abortion of a Tay Sachs fetus<sup>33</sup> but allows the abortion of an anencephalic fetus.<sup>34</sup> In cases of multifetal pregnancy such as quadruplets or more, he permits the

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24. *Ibid.*

25. *Ibid.*

26. *Ibid.*

27. *Ibid.*

28. *Nishmat Avraham*, vol. 4, *Even Haezer* 1:3.

29. *Ibid.* 1:1.

30. *Nishmat Avraham*, vol. 4, *Even Haezer* 5:2.

31. *Emek Halachah*, Vol. 2, 1989, p. 170.

32. *Nishmat Avraham*, *Even Haezer* 1:2.

33. *Nishmat Avraham*, *Choshen Mishpat* 425:1:15.

34. *Ibid.* *Orach Chayim* 330:5.

selective abortion of some of the fetuses to save the mother and the other fetuses.<sup>35</sup> Rabbi Auerbach rules that an anesthesiologist is forbidden to give anesthesia to a woman for an abortion that is halachically prohibited, even if he may lose his job.<sup>36</sup> An expert in ultrasound should not perform an ultrasound examination for a forbidden abortion but need not lose his job because of it.<sup>37</sup> Finally, Rabbi Auerbach permits an autopsy of an abortus after repeated miscarriage in order to determine the reason for the repeated miscarriage.<sup>38</sup>

#### **d. Anencephalics and Other Defective Newborns**

Although Rabbi Auerbach permits the abortion of an anencephalic fetus (see above), he forbids the removal of organs for transplantation from an anencephalic newborn as long as the baby breathes spontaneously. To do so constitutes an act of murder.<sup>39</sup> A full term anencephalic baby should be treated even on the Sabbath, but there is no obligation to resuscitate it. It may even be forbidden to prolong its dying process.<sup>40</sup>

Spina bifida in a baby should be surgically corrected if possible.<sup>41</sup> A baby with major physical defects need not be operated on if the result may be significant suffering such as paralysis and the chances of survival are doubtful.<sup>42</sup> One should not desecrate the Sabbath for a prematurely-born baby who also suffers from one or more lethal defects. However, one should do everything possible to save such a baby so that people should not neglect appropriate treatment for a future baby who may have a chance, however slim, to survive. If there is doubt as to whether or not the defect is lethal or if the baby was born at term with a lethal defect, everything necessary should be done on the Sabbath except for resuscitation.<sup>43</sup>

The laws of mourning apply to prematurely-born babies, even after only five or six gestational months, provided they survive for

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35. *Ibid.* *Choshen Mishpat* 425:1:21.

36. *Nishmat Avraham*, vol. 4, *Orach Chayim* 656:2.

37. *Ibid.*

38. *Ibid.* *Yoreh De'ah* 349:2:4.

39. *Emek Halacha*, vol. 2, 1989, pp. 207ff.

40. *Nishmat Avraham*, vol. 4, *Orach Chayim* 330:5.

41. *Encyclopedia Hilchatit Refuit*, vol. 3, s.v. *yilod*, p. 130, note 390.

42. Responsa *Minchat Shlomo* #91:24.

43. *Shemirat Shabbat Kehilchatah* chap. 36, note 24; *Nishmat Avraham*, vol. 4, *Orach Chayim* 330:3.

more than thirty days after discharge from an incubator.<sup>44</sup> However, if a baby dies within a few days after discharge from an incubator in which it lived for more than thirty days or if it has lethal defects in the respiratory or cardiac systems, the laws of mourning do not apply.<sup>45</sup>

#### **e. Redemption of the Firstborn**

According to Rabbi Auerbach, a firstborn premature newborn baby boy should be redeemed thirty days after his discharge from the incubator. A full term firstborn baby boy should be redeemed on time even if he is still in an incubator.<sup>46</sup> A baby born with lethal defects should not be redeemed even if medical intervention enabled him to survive more than thirty days.<sup>47</sup> A baby born with a defect halachically classified as *terefah* (non-viable) who has been treated and recovered, should nevertheless be redeemed with the recitation of the appropriate blessings.<sup>48</sup>

Further, Rabbi Auerbach rules that a male child born after a miscarriage within forty days of conception should be redeemed as the firstborn.<sup>49</sup> After three months of gestation, a fetus is considered formed and a baby boy born after such a miscarriage should not be redeemed. However, if the first fetus was found by ultrasound examination to be underdeveloped, the next newborn male should be redeemed as a firstborn.<sup>50</sup>

#### **f. Circumcision**

Rabbi Auerbach rules that a baby with physiological jaundice should be circumcised as soon as he no longer appears jaundiced to the naked eye.<sup>51</sup> A newborn baby with a temperature of 38<sup>0</sup>C or above is considered ill even if the fever is due to dehydration. Circumcision should, therefore, be postponed until seven days after recovery.<sup>52</sup> The requirement to wait seven days after complete recovery from an illness also applies to adults who have to be

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44. *Nishmat Avraham, Yoreh De'ah*, end of 374.

45. *Ibid.* vol. 4, *Yoreh De'ah* 305:1.

46. *Otzar Pidyon Haben*, chap. 3, note 32.

47. *Nishmat Avraham*, vol. 4, *Yoreh De'ah* 305: 1.

48. *Ibid.* 305:3.

49. *Nishmat Avraham, Yoreh De'ah* 305:4.

50. *Otzar Pidyon Haben*, chap. 1, note 19.

51. *Noam*, vol. 10, 1967, pp. 168ff.

52. *Nishmat Avraham, Yoreh De'ah* 262:6:3 and vol. 4, *Yoreh De'ah* 262:1.

circumcised.<sup>53</sup> An anemic baby can be circumcised as soon as he recovers from the anemia; but if he required treatment such as blood transfusion, one must postpone the circumcision until seven days after complete recovery.<sup>54</sup> A baby who is born circumcised and who only requires the extraction of a drop of blood, can have this done without waiting seven days even if the baby was ill.<sup>55</sup> A baby treated with antibiotics for an infection should be circumcised seven days after recovery from the infection, irrespective of when the antibiotics were discontinued.<sup>56</sup>

Nowadays, asserts Rabbi Auerbach, it is permissible to circumcise a hemophiliac boy on the eighth day of life because of the availability of efficacious treatment to replace the missing clotting factor.<sup>57</sup> A baby born with incurable, severe cyanotic congenital heart disease should be circumcised thirty days after birth if there is no medical contraindication.<sup>58</sup> If possible, it is proper to excise a small piece of foreskin on the eighth day of life in a baby with hypospadias leaving the remaining foreskin for later urological correction of the defect. If not possible, the *mohel* or ritual circumciser should be present at the corrective surgery, should uncover the foreskin, and recite the appropriate blessings.<sup>59</sup>

A baby born following artificial insemination or in-vitro fertilization should not be circumcised on the Sabbath or a Festival.<sup>60</sup> In a case of suspected acquired immunodeficiency syndrome (AIDS), the *mohel* is allowed to perform the *metzitzah* using a glass tube or the back of a 5cc syringe.<sup>61</sup>

## The End Of Life

### a. Terminally Ill

Rabbi Auerbach rules that there is no obligation actively to prolong the life of a suffering terminally ill patient<sup>62</sup> even if the patient is in a coma.<sup>63</sup> The talmudic and rabbinic term *gossess*

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53. *Ibid.* Yoreh De'ah 262:4.

54. *Ibid.* 262:2:1.

55. *Ibid.* 263:4.

56. *Ibid.* vol. 4, Yoreh De'ah 262:1.

57. *Ibid.* Yoreh De'ah 263:4.

58. *Ibid.* 262:6:2.

59. *Assia*, vol. 3, 1983, p. 389.

60. *Noam*, vol. 1, 1958, pp. 155-166.

61. *Nishmat Avraham*, vol. 4, Yoreh De'ah 264:1.

62. Responsa *Minchat Shlomo* # 91:24.

63. *Encyclopedia Hilchatit Refuit*, vol. 4, s.v. *noteh lamut* pp. 402-403.



(traditionally referring to a person who will live no more than 72 hours) cannot be precisely defined in modern medical terms for halachic purposes.<sup>64</sup> Nevertheless, one should not unnecessarily move a *gossess* but may touch him to provide for the patient's needs.<sup>65</sup> A *gossess* may be moved in order to save another patient's life; for example if the *gossess* lies in an emergency room thereby obstructing access for another very seriously ill patient, the *gossess* may be carefully moved.<sup>66</sup> It is forbidden, however, to disconnect or remove equipment from a *gossess* even to save someone else.<sup>67</sup>

According to Rabbi Auerbach, nutrition and hydration should be given to a terminally ill patient even against the patient's wishes, if necessary by a nasogastric tube or gastrostomy.<sup>68</sup> There is no obligation to supply hyperalimentation to such a patient.<sup>69</sup> Specific medical treatments for the terminal illness or its complications such as chemotherapy, hemodialysis, and mechanical ventilation may be withheld. However, general supportive and comfort measures such as nutrition, hydration, oxygen and antibiotics should be administered.<sup>70</sup>

A suffering, terminally ill patient with three or more failing organs who is expected to die within a short time may have all further treatments and laboratory evaluations withheld. It is also permissible gradually to reduce current treatments such as lowering the settings on the respirator, decreasing the oxygen concentration, and discontinuing further use of drugs to maintain blood pressure, provided these maneuvers do not cause immediate death.<sup>71</sup> A patient in permanent coma or persistent vegetative state should receive routine care and treatment but should not be resuscitated.<sup>72</sup> Pain relief medications, including opiates such as morphine, should be given to all patients with pain including the terminally ill, even if there is a risk of depressing respiration and thereby hastening death.<sup>73</sup> It is permissible for a patient with amyotrophic lateral sclerosis (ALS) to request not to be connected

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64. *Ibid.* p. 371.

65. *Ibid.* p. 374.

66. *Assia*, no. 55, 1994, p. 43.

67. *Ibid.*

68. Responsa *Minchat Shlomo* #91:24.

69. *Encyclopedia Hilchatit Refuit*, vol. 4, s.v. *noteh lamut* p. 405.

70. *Ibid.* p. 403.

71. *Ibid.* p. 404.

72. *Nishmat Avraham*, vol. 4, *Yoreh De'ah* 339:2.

73. *Ibid.* 339:4.

to a respirator when the disease progresses to its late stages, and his request should be honored.<sup>74</sup>

### **b. Brain Death and Organ Transplantation**

There is presently an intense rabbinic debate about whether total brain death, including brain stem death, is a valid halachic definition of death irrespective of cardiac activity. Rabbi Auerbach's view was that complete, irreversible brain death, namely death of all the cells of the brain, constitutes death according to halacha even if the heart is still beating and even in the case of a brain dead pregnant woman whose baby is delivered alive. This fact has to be medically established with certitude; brain stem death alone is insufficient to determine death.<sup>75</sup> Nowadays, since physicians cannot establish the above-mentioned criteria with absolute certainty, a brain dead person is considered doubtfully dead and the halachic rules pertaining to a *gossess* apply to him as long as the heart beats. Accordingly, it is forbidden to move such a patient or to inject into his body any material to verify whether or not the brain is completely dead. Theoretically, it would be permissible to establish brain death by applying highly reliable tests that would not require moving the patient at all.<sup>76</sup>

Rabbi Auerbach also ruled that if a patient is diagnosed as brain dead by routine criteria, it is permissible to disconnect the respirator even though the patient has not been absolutely proven to be brain dead as required by halacha.<sup>77</sup> If the heart stops for thirty seconds in a clinically diagnosed brain dead patient, the patient is dead according to halacha.<sup>78</sup> A patient following open heart surgery who cannot be weaned off the heart-lung machine is considered halachically dead and may be disconnected from the machine.<sup>79</sup> It is forbidden to disconnect a respirator from a terminally ill patient unless the patient is clinically diagnosed as brain dead.<sup>80</sup>

These pivotal rulings by Rabbi Auerbach concerning brain death are consistent with his views on organ transplantation. Since

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74. Responsa *Yachel Yisroel*, part 2 #62.

75. *Assia*, no. 53-54, 1994, pp. 5ff.

76. *Ibid.*

77. *Ibid.*

78. *Ibid.*

79. *Nishmat Avraham*, vol. 4, *Yoreh De'ah* 155:1.

80. *Encyclopedia Hilchatit Refuit*, Vol. 4, s.v. *noteh lamut*, p. 407.

the determination of total brain death is nowadays inadequate according to halachic criteria, it is forbidden to use a brain dead person as an organ donor. Rabbi Auerbach also forbids a Jew in Israel to be enrolled as a potential organ recipient but permits it abroad.<sup>81</sup> Theoretically, if new medical tests will ascertain with absolute certainty the complete and irreversible cellular death of the brain, it would be permissible to use such a patient as an organ donor even if the heart is still beating.<sup>82</sup>

In the meantime, Rabbi Auerbach allows the removal of a respirator from a clinically diagnosed brain dead person when his heart stops for thirty seconds. If he can then be successfully resuscitated, his organs can be removed for transplantation.<sup>83</sup>

Heart transplantation is not considered murder of the recipient at any stage of the operation. The patient does not assume the halachic categorization of a *nevelah* (corpse) or *terefah* (non-viable) after the old heart is removed and before the new heart is implanted.<sup>84</sup>

It is permissible to obtain skin from a dead person in order to treat a severely burned patient.<sup>85</sup>

Regarding the donation of organs by live donors, Rabbi Auerbach states that it is permissible to be a live kidney donor, but there is no obligation to do so.<sup>86</sup> There is no prohibition for a live kidney donor to receive payment nor is it forbidden for an agent to receive payment for his services in matching a donor with a recipient. In either case, one still fulfills the *mitzvah* (meritorious act) of saving the recipient's life.<sup>87</sup>

According to Rabbi Auerbach, donating live bone marrow for a needy relative is a *mitzvah*.<sup>88</sup> Every suitable bone marrow donor should be encouraged to donate marrow to save life. He should not be pressured, however, to do so if he is afraid of the discomfort and minimal danger involved in the procedure.<sup>89</sup> A child can serve as a bone marrow donor only if he understands the meaning of

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81. *Assia*, no. 53-54, 1994, pp. 5ff.

82. *Ibid.*

83. *Ibid.*

84. *Nishmat Avraham, Yoreh De'ah* 155:2:1.

85. *Ibid.* 349:3:2:2.

86. *Ibid.* 157:4:2.

87. *Ibid.* vol. 4, *Choshen Mishpat* 420:1.

88. *Ibid.* *Yoreh De'ah* 349:3:3:2.

89. *Ibid.* vol. 4, *Even Haezer* 80:1.

being a donor and can consent thereto; otherwise it is doubtful that he can serve as a donor.<sup>90</sup> It is permissible to donate blood to a blood bank, even for a fee and even if the blood may be eventually discarded.<sup>91</sup>

### c. Autopsy and Post Mortem Tests

Autopsies in Judaism are only permitted, and perhaps required, if the results of the autopsy may immediately save the life of another patient dying of the same disease. Since biopsies are performed on living patients, Rabbi Auerbach permits postmortem biopsies even if no patient is at hand who may directly benefit from the results of such biopsies.<sup>92</sup> On the Sabbath, however, a post-mortem biopsy is allowed only if there is a patient at hand who may benefit from the results.<sup>93</sup>

Rabbi Auerbach allows the performance of tests on a dead body to identify the deceased so that the family can mourn and the wife remarry.<sup>94</sup> He also allows the removal of a pacemaker from a deceased person; if the relatives object, they are required to pay for the pacemaker.<sup>95</sup> He also forbids a person from selling his body or donating his body after death to a medical school.<sup>96</sup> Finally, he permits physicians to perform endotracheal intubation on the recently deceased to develop expertise with which to save future patients.<sup>97</sup>

## The Practice of Medicine

### a. Confidentiality

Rabbi Auerbach rules that whoever knows about a significant defect or illness in a bride or a groom may disclose the information to the other side but is not obligated to do so.<sup>98</sup> The affected future spouse may also withhold disclosure of the defect or illness at the first or second meeting but should reveal it before the engagement is announced.<sup>99</sup> Failure by a woman to disclose the fact that she

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90. *Ibid.* *Choshen Mishpat* 243:1.

91. *Nishmat Avraham*, *Yoreh De'ah* 349:3:3:3.

92. *Nishmat Avraham*, vol. 4, *Yoreh De'ah* 349:2.

93. *Ibid.* *Orach Chayim* 316:12.

94. *Ibid.* *Orach Chayim* 349:1.

95. *Ibid.* *Yoreh De'ah* 349:3:1 and *Choshen Mishpat* 235:2.

96. *Ibid.* *Yoreh De'ah* 349:2:3.

97. *Ibid.* vol. 4, *Yoreh De'ah* 349:2.

98. *Nishmat Avraham*, *Even Haezer* 2:1.

99. *Encyclopedia Hilchatit Refuit*, vol. 5, s.v. *kiddushin vegeerushin*, p. 484.

suffers from severe heart disease, diabetes mellitus or infertility may be grounds for nullification of the marriage unless these abnormalities developed after the marriage.<sup>100</sup> The same rule applies for a significant blemish or disease in a man.<sup>101</sup>

If a woman with a venereal disease asks her physician not to disclose to her husband that she had an affair with a stranger, the physician is not obligated to do so.<sup>102</sup> A man is obligated to disclose to his spouse that he is suffering from AIDS. If he refuses to do so, the physician should do so even against the patient's wishes.<sup>103</sup> If one spouse suffers from AIDS, the couple cannot live together, the man may not use a condom, and their only recourse is divorce.<sup>104</sup>

One is obligated to report child abuse to the authorities. It is forbidden to return a battered child to his parents. It is preferable to find an observant Jewish foster or surrogate family for such a child; if it is not possible, the child may be placed with a non-observant family. These rules apply irrespective of whether the child is physically battered, raped, or otherwise seriously abused.<sup>105</sup>

#### **b. Informed Consent**

There is no need to obtain specific informed consent for routine blood drawing in a hospital, even if it is done by students.<sup>106</sup> It is permissible for a resident surgeon to operate upon patients even if a more qualified surgeon is available, unless the patient specifically requests the more experienced physician.<sup>107</sup>

A pregnant woman cannot be coerced to undergo a cesarean section even if there is an increased risk to the fetus by vaginal delivery.<sup>108</sup>

#### **c. Medical Experimentation and Genetic Manipulations**

A healthy person may participate in a medical experiment only if there is no danger or suffering involved other than minor discomfort such as drawing blood. If a dangerously ill patient is in

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100. *Nishmat Avraham*, *Even Haezer* 154:3 and vol. 4, *Even Haezer* 68:1.

101. *Ibid.* *Even Haezer* 39:1:5.

102. *Ibid.* part 4, *Even Haezer* 115:1.

103. *Ibid.* 2:1:1.

104. *Ibid.* 2:1:2.

105. *Ibid.* vol. 4, *Choshen Mishpat* 388:1.

106. *Nishmat Avraham*, *Yoreh De'ah* 155:2:4.

107. *Ibid.*

108. *Shemirat Shabbat Kehilchatah*, chap. 36, note 4.

need of a life saving treatment, a healthy person is allowed to expose himself to some danger or suffering to save the patient's life, e.g. to donate a kidney.<sup>109</sup> A non-seriously ill patient without pain or suffering should not participate in potentially dangerous experiments.<sup>110</sup> Even for medical studies or medical experiments, it is forbidden to neuter male or female animals.<sup>111</sup>

Genetic material may be transferred from one species to another via bacteria or viruses and the resultant species is not considered *kilayim*, a forbidden mixture.<sup>112</sup> Transfer of genetic material which creates a significant change in the characteristics of the species is permissible in animals but not in plants.<sup>113</sup> If genetic manipulation of a tree induces it to produce vegetables such as tomatoes, the blessing to be recited when eating these "tomatoes" is *boreh peri ha'etz*, which is the usual blessing for fruits of a tree.<sup>114</sup> If genetic manipulation of non-kosher fish causes it to grow scales, it is still considered non-kosher.<sup>115</sup>

#### **d. Malpractice and Physician's Strikes**

Rabbi Auerbach rules that if a patient dies during surgery because of the surgeon's error, the surgeon may have to be exiled to a city of refuge (*galut*). If the patient dies after the surgery, the surgeon is exempt from *galut*.<sup>116</sup> If the patient had chosen the surgeon, the latter is exempt from *galut* unless he was negligent in performing the surgery.<sup>117</sup>

Physicians and nurses are forbidden to strike in order to improve their salaries or working conditions if any patient might thereby be endangered.<sup>118</sup>

#### **e. Surgery**

Rabbi Auerbach is of the opinion that it is permissible to remove one or both undescended testicles because of the danger of

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109. *Nishmat Avraham, Yoreh De'ah* 157:4 and 349:3:3:4.

110. *Assia*, vol. 5, 1986, pp. 18ff.

111. *Nishmat Avraham, Even Haezer* 5:9.

112. *Nishmat Avraham*, vol. 4, *Choshen Mishpat* 425:1.

113. *Ibid.*

114. *Ibid.*

115. *Ibid.*

116. *Nishmat Avraham, Yoreh De'ah* 336:7.

117. *Ibid.*

118. *Ibid. Choshen Mishpat* 333: 1.

malignant transformation.<sup>119</sup> A patient with metastatic cancer who requires bilateral orchiectomy to palliate his disease is not halachically considered to have been castrated and may continue to live with his wife.<sup>120</sup> An enlarged clitoris in a chromosomal and phenotypic female baby may be surgically corrected.<sup>121</sup>

#### **f. Triage**

It is axiomatic in Judaism that one may not sacrifice one life to save another life. Therefore, one may not hasten the death of any person, even of a dangerously-ill patient close to death, in order to save another person, even if the latter is a great Torah scholar.<sup>122</sup> Thus, it is forbidden to disconnect a patient from a respirator, even if he is close to death and has no chance to survive, in order to provide that respirator to another needy patient who has a curable illness.<sup>123</sup>

Considerations of priority are invoked only if two people need a treatment which is available for only one of them.<sup>124</sup> In such a case, priority should be given to the patient in whom the medical chances for success are greater, irrespective of the social status of the two patients.<sup>125</sup> If the chances for success are equal, the priorities enumerated in the Talmud<sup>126</sup> should be followed.<sup>127</sup> It is preferable not to connect a patient who has only a very slim chance of survival to a respirator which will probably be needed by another dangerously ill patient with a curable illness.<sup>128</sup>

#### **g. Dietary Laws (kashrut)**

A non-seriously ill patient need only wait one hour after eating a meat meal before consuming dairy products.<sup>129</sup> A hospitalized patient may eat kosher food from dishes that were not ritually

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119. *Nishmat Avraham, Even Haezer* 5:5.

120. *Ibid.*

121. *Ibid.* 44:3.

122. *Encyclopedia Hilchatit Refuit*, vol. 5, s.v. *kedumiyot* p. 532; *Nishmat Avraham, Yoreh De'ah* 252:2.

123. *Encyclopedia*, p. 533.

124. *Ibid.*

125. *Nishmat Avraham, Yoreh De'ah* 252:2.

126. *Horayot* 13a.

127. *Ibid.* 252, note 5.

128. *Bishvilei Harefuah*, no. 8, 1987, pp. 16ff.

129. *Nishmat Avraham, Yoreh De'ah* 89:3.

immersed as required by halacha.<sup>130</sup> It is forbidden to desecrate the Sabbath to bring a patient special kosher food if regular, reliably kosher food is available to the patient.<sup>131</sup> A person is not obligated to give his kosher food to a patient who is allowed to eat a non-kosher product.<sup>132</sup>

A non-dangerously ill patient is allowed to swallow pills containing non-kosher products.<sup>133</sup> Swallowing pills is not considered eating,<sup>134</sup> although consuming any substance contained in a capsule is considered eating.<sup>135</sup>

#### **h. Priest (Cohen)**

Even nowadays, a priest is prohibited from becoming ritually defiled. The highest grade of such defilement occurs if a *cohen* touches a dead body or is present under the same roof with a dead body. Therefore, a *cohen* should not study to become a male-nurse [or physician]. However, rules Rabbi Auerbach, if he did so he is permitted to do whatever is needed for the care of his patients including their excretory functions.<sup>136</sup> A male-nurse *cohen* may work in a hospital, provided he is able to leave the room in which a patient dies. If he is caring for other patients in another room, he should close the door and continue treating his patients.<sup>137</sup> A *cohen* should leave a dying person and not stay in the same room with him unless the patient requires his attention or is conscious and afraid to be alone; then the *cohen* should remain with the patient.<sup>138</sup>

A *cohen* may visit sick hospitalized patients as long as he is unaware of any dead person in the hospital.<sup>139</sup> A hospitalized *cohen* may go to the hospital synagogue for services. If he learns that there is a dead body in the hospital, he should go to the nearest room and close the door until the deceased is removed to the mortuary or out of the building.<sup>140</sup> In order to minimize halachic

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130. *Ibid.* 120:1.

131. *Shemirat Shabbat Kehilchatah*, chap. 40, note 48.

132. *Nishmat Avraham, Choshen Mishpat* 340:1.

133. *Shemirat Shabbat Kehilchatah*, chap. 33, note 19.

134. *Responsa Minchat Shlomo* #17.

135. *Bishvilei Harefuah*, no. 2, 1979, pp. 27ff.

136. *Nishmat Avraham, Orach Chayim* 128:6.

137. *Ibid. Yoreh De'ah* 370:2:2.

138. *Ibid.* vol. 4, *Yoreh De'ah* 339:4.

139. *Ibid. Yoreh De'ah* 335:4.

140. *Ibid.* 372:1.



problems pertaining to a *cohen* in a hospital, Rabbi Auerbach recommends that a special closed stretcher be constructed according to halachic specifications in which deceased patients can be transported without imparting ritual defilement.<sup>141</sup>

A pregnant woman in her ninth month of pregnancy whose husband is a *cohen* should not enter a house in which there is a dead body, lest she deliver her baby there and her *cohen* son become ritually defiled.<sup>142</sup> A newborn male *cohen* should be discharged from the hospital as soon as medically permitted.<sup>143</sup>

## The Sabbath

### a. General rules

One is obligated to desecrate the Sabbath for a dangerously ill patient. One who desecrated the Sabbath erroneously believing that he was helping a seriously ill person is exempt and is considered to have acted properly.<sup>144</sup> For a non-seriously ill patient, one may violate only rabbinic prohibitions on the Sabbath. Thus one may ask a non-Jew to perform necessary tasks for the patient, or one may perform such tasks oneself in a manner different than usual (*shinuy*) in order to convert a biblical violation into a rabbinic violation.<sup>145</sup> Following the completion of life-saving activity on the Sabbath, one may violate only rabbinic prohibitions. Thus, a physician returning from a medical emergency should ask a non-Jew to drive his car home.<sup>146</sup>

One is not obligated to take burdensome preventive steps before the Sabbath in order to avoid possible permissible Sabbath desecration.<sup>147</sup> For example, a physician who is on-call does not have to leave his family before the Sabbath and stay in the hospital in order not to have to travel on the Sabbath if he is called.<sup>148</sup> One may call an ambulance on the Sabbath and is not obligated to ask a neighbor to drive the patient to the hospital since the neighbor will have to stay there until the Sabbath is over.<sup>149</sup> A pregnant woman

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141. Responsa *Minchat Shlomo* #72.

142. *Nishmat Avraham, Yoreh De'ah* 371:1.

143. *Ibid. Orach Chayim* 343:2.

144. *Shemirat Shabbat Kehilchatah* 32:19.

145. *Ibid.* 32:17.

146. Responsa *Minchat Shlomo* #8.

147. *Shemirat Shabbat Kehilchatah* 32:104.

148. *Ibid.* 40:64.

149. *Ibid.* 40:72.

in her ninth month is not required to stay close to the hospital before the Sabbath in order to avoid the need to travel on the Sabbath if labor begins then.<sup>150</sup> One need not give one's food to a dangerously ill patient if by doing so one will be left without cooked food for oneself. Rather, it is permitted to cook for the patient on Shabbat in these circumstances.<sup>151</sup> Left over food cooked for a dangerously ill patient may not be eaten by healthy people or even by non-seriously ill patients.<sup>152</sup> One may put on a light to treat a dangerously ill patient even if a light near the next patient could be moved but might wake him up.<sup>153</sup>

It is permissible to violate even biblical Sabbath prohibitions to treat a non-Jew.<sup>154</sup> One is not obligated to spend money to avoid Sabbath desecration on behalf of a dangerously ill patient.<sup>155</sup> One should not desecrate the Sabbath to contact one's Rabbi to ask him to pray on behalf of a patient.<sup>156</sup>

#### **b. Dangerously Ill Patients**

In Jewish law, all biblical and rabbinic commandments are suspended in order to try to save a human life. The only exceptions are the prohibitions against idolatry, murder and forbidden sexual relations such as incest and adultery. Thus, the Sabbath laws are waived or disregarded if any life-saving action is needed. Rabbi Auerbach rules that one should desecrate the Sabbath even to save the life of an unborn fetus.<sup>157</sup> All efforts should be made on the Sabbath to treat a premature born baby or a baby born with one or more disabilities such as Down's Syndrome if there is any hope for survival. A full term baby with a life threatening condition should be aggressively treated even if the baby can only live for a short while.<sup>158</sup>

A patient who suffers cardiopulmonary arrest may be resuscitated on the Sabbath even if the chances for success are slim.<sup>159</sup> A

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150. *Nishmat Avraham, Orach Chayim* 330:2.

151. *Shemirat Shabbat Kehilchatah* 32:74.

152. *Nishmat Avraham, Yoreh De'ah* 155:6:7.

153. *Shemirat Shabbat Kehilchatah* 32:65.

154. *Ibid.* 40:14.

155. *Responsa Minchat Shlomo* #7:1.

156. *Nishmat Avraham, Orach Chayim* 301:14.

157. *Nishmat Avraham, part 4, Orach Chayim* 330:4.

158. *Shemirat Shabbat Kehilchatah* 36:24.

159. *Ibid.* 32:20.

patient who may have suffered a heart attack may be transported to the hospital on the Sabbath even if he looks well.<sup>160</sup>

A seriously ill patient may receive injections of medications on the Sabbath.<sup>161</sup> High fever of undetermined cause is considered a situation for which the Sabbath may be desecrated.<sup>162</sup> One desecrates the Sabbath even for a person who endangered his own life.<sup>163</sup>

A tooth may be extracted on the Sabbath if the patient might otherwise be endangered.<sup>164</sup> Wounds should not be sutured on the Sabbath unless possible danger to life might otherwise ensue.<sup>165</sup> Battery operated medical equipment may be switched off on the Sabbath after use if it may be needed later for other dangerously ill patients.<sup>166</sup> Medication or food for a dangerously ill patient may be removed from a refrigerator on the Sabbath even if by doing so the refrigerator light will go on.<sup>167</sup> After using the phone on the Sabbath for a dangerously ill patient, one should not replace the receiver on the hook unless that phone may be needed again during that Sabbath for the same or another dangerously ill patient.<sup>168</sup>

### **c. Non-seriously Ill Patients**

According to Rabbi Auerbach, intravenous injections are not allowed on the Sabbath for non-seriously ill patients.<sup>169</sup> A diabetic patient, however, is allowed to check his blood sugar by taking a drop of blood and testing it on a suitable paper.<sup>170</sup> A needle and syringe may be assembled on the Sabbath to inject a medication subcutaneously or intramuscularly or to draw blood, provided they are disassembled before being discarded.<sup>171</sup>

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160. *Shemirat Shabbat Kehilchatah* 32:14.

161. *Ibid.* 32:57.

162. *Ibid.* 32:11.

163. *Moriah*, Sivan 5731 (1971), pp. 32ff.

164. *Nishmat Avraham, Orach Chayim* 328:12.

165. *Ibid.* vol. 4, *Orach Chayim* 340:2.

166. *Shemirat Shabbat Kehilchatah* 40:91.

167. *Ibid.* 3271.

168. *Ibid.* 32:41.

169. *Nishmat Avraham, Orach Chayim* 316:2.

170. *Ibid.* vol. 4, *Orach Chayim* 316:1.

171. *Shemirat Shabbat Kehilchatah*, chap. 33 note 43.

Rabbi Auerbach allows the measuring of body temperature on the Sabbath.<sup>172</sup> He also permits the use of suppositories<sup>173</sup> and ophthalmic ointment<sup>174</sup> on the Sabbath. One may extract ointment from a tube, apply it on a wound on the Sabbath and cover the wound with a bandage.<sup>175</sup>

An insomniac is allowed to take sleeping pills on the Sabbath.<sup>176</sup> A patient prescribed a several-day course of medication is allowed to take it even on the Sabbath, provided that any interruption of the treatment may harm the patient or that the efficacy of the medication depends on its uninterrupted use.<sup>177</sup> One may tear the paper cover of a medication on the Sabbath even if one thereby tears the letters or writing on the paper cover.<sup>178</sup> A patient with a minor ailment should take medication on the Sabbath in an unusual manner (e.g. without water).<sup>179</sup> One may use drops for a common cold on the Sabbath if one is otherwise embarrassed by the running nose.<sup>180</sup> A woman permitted to use contraceptive pills may take them on the Sabbath.<sup>181</sup>

Other rulings of Rabbi Auerbach concerning non-seriously ill patients on the Sabbath include: One may apply an elastic bandage on a dislocated ankle on the Sabbath.<sup>182</sup> One may not paste a bandage with adhesive tape.<sup>183</sup> Although one may tear cotton wool on the Sabbath,<sup>184</sup> it is forbidden to use alcohol-wet cotton to clean a wound or to disinfect the skin before an injection.<sup>185</sup> One may wear orthodontic devices on the Sabbath, even in the public domain.<sup>186</sup> A patient with an ileostomy, colostomy or urinary drainage bag should empty the bag before going out into a public domain.<sup>187</sup>

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172. *Ibid.* 40:2 and notes 3 and 8.

173. *Ibid.* 33:11.

174. *Ibid.* 34:8.

175. *Ibid.* 33:14.

176. *Ibid.* 33:16.

177. *Nishmat Avraham, Orach Chayim* 321:2.

178. *Shemirat Shabbat Kehilchatah* chap. 33, note 29.

179. *Ibid.* 34:5.

180. *Ibid.* 34:10 and note 52.

181. *Ibid.* 34:19.

182. *Nishmat Avraham, Orach Chayim* 301:15.

183. *Shemirat Shabbat Kehilchatah* 35:25.

184. *Ibid.* Chap. 35, note 48.

185. *Ibid.* 35:11.

186. *Ibid.* 34:29.

187. *Nishmat Avraham, Orach Chayim* 301:4.

A nursing woman with excess milk may extract it on the Sabbath, even using a mechanical pump.<sup>188</sup> One may extinguish a light if it disturbs the patient.<sup>189</sup> It is preferable to schedule elective surgery for the beginning of the week so as to minimize the need for post operative Sabbath desecration. If the surgeon's schedule does not allow that or if the patient is in pain, elective surgery may be performed any weekday.<sup>190</sup>

#### **d. The Physician and the Sabbath**

Rabbi Auerbach allows a physician but not a medical student to study medicine on the Sabbath,<sup>191</sup> provided the physician does not desecrate the Sabbath in any way.<sup>192</sup> An observant Jewish physician should take his "on-call" on the Sabbath and not switch with a non-observant Jew<sup>193</sup> or a non-Jewish physician.<sup>194</sup> A physician may carry a beeper on the Sabbath if he may be called to care for dangerously ill patients.<sup>195</sup> It is preferable for a physician to use a calculator on the Sabbath to calculate the dose of a medication rather than do so in writing.<sup>196</sup>

A physician may write on the Sabbath using ink which disappears in three to four days.<sup>197</sup> It is forbidden to write a discharge summary on the Sabbath but one may dictate it to a non-Jew.<sup>198</sup> A death certificate may not be signed on the Sabbath; if delay might cause dishonor to the deceased, it is permissible to ask a non-Jewish physician to sign it.<sup>199</sup>

#### **Festivals and Fast Days**

It is permitted to telephone the doctor or hospital on a Festival, even for a non-dangerously ill patient. During the intermediate days of Passover or Tabernacles (*Chol HaMoed*), one

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188. *Ibid.* 278:4.

189. *Ibid.* 278:4.

190. *Shemirat Shabbat Kehilchatah* 32:33.

191. *Nishmat Avraham, Orach Chaim* 502:1.

192. Responsa *Tzitz Eliezer*, Vol. 9#1 7:2:9.

193. *Shemirat Shabbat Kehilchatah* chap. 32 note 125.

194. *Ibid.* chap. 40, note 65.

195. *Nishmat Avraham*, vol. 4, *Orach Chayim* 201:1.

196. *Assia*, no. 57-58, 1996, pp. ???

197. *Nishmat Avraham, Orach Chayim* 340:6.

198. *Ibid.*

199. *Ibid.*

should not schedule elective visits to a physician.<sup>200</sup> A physician who cares for a patient during *Chol HaMoed* is allowed to receive his usual fee.<sup>201</sup>

A dangerously ill patient who needs a medication containing *chametz* (leavened bread) on Passover should obtain it before the holiday, but not take ownership of it until after the holiday by paying for it after the holiday.<sup>202</sup> If *chametz*-free medication is not available, even a non-seriously ill patient may use his regular medication, which is usually bitter,<sup>203</sup> even if it is coated with a sweetener.<sup>204</sup>

On Yom Kippur it is preferable for a patient to stay home in bed rather than go to synagogue if bed rest will allow the patient to fast.<sup>205</sup> A non-seriously ill patient who needs to take a medication on Yom Kippur should wrap it up in a thin piece of paper and then swallow it.<sup>206</sup> A nursing woman should fast on Yom Kippur, unless she feels that she has inadequate milk for her baby.<sup>207</sup> A patient who must eat on Yom Kippur should eat very small amounts beginning in the morning rather than eat a larger amount later in the day.<sup>208</sup> A patient who eats less than the amount for which one is culpable (*shiur*) is viewed as if he fasted and he may be called up to the Torah reading on Yom Kippur.<sup>209</sup> A patient who must eat on Yom Kippur may eat regular food and drink regular beverages.<sup>210</sup> However, he should not eat sweets for the enjoyment.<sup>211</sup> An apparently healthy person who claims he must eat should not be fed but may feed himself. If a pregnant woman feels a need to eat, she may be fed on Yom Kippur.<sup>212</sup> A patient who needs to eat bread on Yom Kippur should wash his hands and recite the appropriate blessings.<sup>213</sup>

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200. *Ibid.* 532:1.

201. *Ibid.*

202. *Ibid.* 550:1.

203. *Moriah*, no. 147-148, 1984, pp. 61ff.

204. *Shemirat Shabbat Kehilchatah*, chap. 40, note 163.

205. *Ibid.* chap. 39, note 94.

206. *Ibid.* 39:8.

207. *Assia*, no. 53-54, 1994, p. 208.

208. *Shemirat Shabbat Kehilchatah*, chap. 39, note 69.

209. *Ibid.* chap. 39, note 11 5.

210. *Nishmat Avraham*, vol. 4, *Orach Chaim* 612: 1.

211. *Otzar Habrit*, part 1, p. 17.

212. *Moriah*, Sivan 5731 (1971), pp. 31ff.

213. *Shemirat Shabbat Kehilchatah* 39:31.

On the fast of the Ninth of Av, a patient who needs to eat may do so and consume normal amounts of food.<sup>214</sup> Such a patient should don phylacteries in the afternoon like others who are fasting.<sup>215</sup> If he eats only after midday, he should don phylacteries before eating and again in the afternoon.<sup>216</sup>

## Miscellaneous Patient Issues

### a. The Disabled

A deaf-mute who can communicate in sign language is considered as a normal person for all halachic purposes.<sup>217</sup> A deaf-mute who can hear with a hearing aid is considered as a hearing person for the purpose of marrying a wife.<sup>218</sup> It is permitted to use a hearing aid on the Sabbath provided it was activated before the Sabbath. One may adjust the volume and one is permitted to wear the hearing aid in the public domain on the Sabbath.<sup>219</sup> One may fix a broken hearing aid on *Chol HaMoed*.<sup>220</sup> A deaf person who hears with a hearing aide cannot read the Scroll of Esther on Purim, and should certainly not recite the blessings.<sup>221</sup>

A blind person can be called up to the Torah reading and may recite the appropriate blessings.<sup>222</sup> Nowadays, a blind man can also serve as a rabbinical judge in a *Bet Din* (Jewish Court of Law).<sup>223</sup> It is doubtful whether a blind person can go into the public domain with a seeing eye dog on the Sabbath since the dog's leash may not be carried in the public domain on the Sabbath.<sup>224</sup>

A father is obligated to educate his mentally-retarded son according to his ability, provided that the son functions cognitively at least at a level of a four or five year old who can understand that G-d gave us the Torah. When he becomes thirteen years of age, he is considered an adult and is obligated to fulfill all the commandments but is exempt from punishment.<sup>225</sup> The communicative

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214. *Nishmat Avraham*, vol. 4, 554:1.

215. *Ibid. Orach Chayim* 555:1.

216. *Shemirat Shabbat Kehilchatah* 62:108

217. Responsa *Minchat Shlomo* #34.

218. *Nishmat Avraham, Even Haezer* 44:1.

219. *Shemirat Shabbat Kehilchatah* 34:28.

220. *Ibid.* chap. 66, note 88.

221. *Sinai*, vol. 22, 1948, Op. 139.

222. *Nishmat Avraham, Orach Chayim* 139:2.

223. *Ibid. Choshen Mishpat* 7:2.

224. *Shemirat Shabbat Kehilchatah* chap. 18, note 62.

225. Responsa *Minchat Shlomo* #34.

method used for severely mentally retarded or autistic people (facilitated communication) should be used as a limited clinical tool but should not be abused for mystical purposes.<sup>226</sup> Finally, Rabbi Auerbach rules that a mentally-retarded child may be placed in an institution where he will be fed non-kosher food, provided there is hope that he might improve.<sup>227</sup>

### **b. Blessings and Prayers**

A variety of medical situations arise which involve questions about the recitation of prayers and blessings. Rabbi Auerbach's view is that a patient with an indwelling urinary catheter with continuous urinary flow should recite the *asher yatzar* blessing only once daily.<sup>228</sup> If a person provides a urine sample for examination and testing, he should recite the *asher yatzar* blessing.<sup>229</sup> A patient with an ileostomy or colostomy may recite the daily prayers or study Torah after cleaning the bag and covering it. A patient with an indwelling urinary catheter need not cover the bag when he prays or studies Torah.<sup>230</sup>

A person with a paralyzed right arm should use his left arm to don phylacteries on the paralyzed arm. If, however, he has no sensation in that arm, he should put on phylacteries on his left arm.<sup>231</sup> A hospitalized bedridden patient may don phylacteries even if his room is not clean. It is preferable, however, to do so after the room is cleaned.<sup>232</sup>

A patient unable to eat the amount of bread needed for handwashing, i.e. the bulk of two olives, should wash his hands without reciting the blessing *al netilat yadayim* before eating the bread.<sup>233</sup> One may feed a patient even if the patient does not recite the appropriate blessings before and after the meal.<sup>234</sup>

After recovering from a serious illness, one recites the *hagomel* blessing of thanksgiving. This rule applies even to a potentially dangerous diagnostic procedure. Thus, a patient who underwent

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226. *Assia*, no. 57-58, 1996 pp. ???

227. *Nishmat Avraham*, *Yoreh De'ah* 81:2.

228. *Nishmat Avraham*, *Orach Chayim* 7:1.

229. *Ibid.*

230. *Ibid.* 76:6.

231. *Ibid.* *Even Haezer* 169:5.

232. *Ibid.* *Yoreh De'ah* 19:1.

233. *Ibid.* *Orach Chayim* end of 210.

234. *Ibid.* 163:2.



cardiac catheterization, even without angioplasty, should recite the *hagomel* blessing.<sup>235</sup> If an adult is circumcised, he should recite this blessing.<sup>236</sup> Women, however, do not recite the *hagomel* blessing except after childbirth.<sup>237</sup>

### c. A Menstruant Woman (*Niddah*)

A menstruating woman is ritually impure and is not allowed to cohabit with her husband until she undergoes immersion (*tevilah*) in a ritual bath (*mikveh*). The same rule applies following any uterine bleeding, but not for bleeding due to a vaginal lesion or wound. Thus, Rabbi Auerbach rules that a woman who experiences bleeding after an intrauterine device is removed is considered *niddah* and must undergo full ritual purification including the counting of five “unclean” and seven “clean” days followed by immersion unless a physician diagnoses a wound as a result of the IUD.<sup>238</sup> If a woman bleeds following a cytologic examination of the vagina, she is also considered *niddah* since such bleeding cannot be considered as due to a wound.<sup>239</sup> A woman whose hymen is surgically incised is not considered *niddah* and is permitted to cohabit with her husband immediately after surgery.

The escape of amniotic fluid in a pregnant woman does not necessarily render her *niddah*. Hence, if there is no bleeding after the breaking of her waters, she remains ritually pure.<sup>240</sup> Technically, there is no inherent prohibition for a husband to be present in the delivery room when his wife is giving birth to a baby, but it is not proper for him to do so. However, if his wife requests her husband’s presence to comfort her, it is permissible provided he does not touch her or look at her private parts during the delivery.<sup>241</sup>

During the immersion in a *mikveh* by a *niddah* as part of her ritual purification, no interposing object (*chatzitzah*) may be present on her body which separates her from the water. Rabbi Auerbach, however, rules that an intrauterine device (IUD) is not considered a *chatzitzah* for a ritual immersion.<sup>242</sup> A woman with a

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235. *Ibid.* vol. 4, *Orach Chayim* 219:2.

236. *Ibid.* 219:4.

237. *Ibid.* *Orach Chaim* 219:1.

238. *Nishmat Avraham, Yoreh De’ah* 196:2.

239. *Ibid.* vol. 4, *Yoreh De’ah* 194:1.

240. *Ibid.* 194:1.

241. *Ibid.* 195-3.

242. *Shaare Tevilah* #40.

perforated eardrum may put fish oil in her ear to prevent water from entering it during her ritual immersion.<sup>243</sup> A woman with a permanent catheter in her urinary bladder is permitted to undergo ritual immersion with the catheter in place.<sup>244</sup>

Sutures in a woman's mouth following oral surgery are not considered as a *chatzitzah*. However, it is preferable to delay her ritual immersion until after their removal.<sup>245</sup> A temporary tooth filling that is expected to remain in place for at least a week is not considered as a *chatzitzah*.<sup>246</sup> Loose orthodontic devices are not considered as a *chatzitzah*; even if they are tight but inserted for medical rather than esthetic reasons, they are also not considered as a *chatzitzah*.<sup>247</sup>

#### d. Seclusion

A male physician may be alone with a female patient in an examining room or consultation room. This is not considered seclusion because nurses or other staff members frequently enter the room. Rabbi Auerbach describes various leniencies in the physician-patient relationship in regard to the prohibition of seclusion.<sup>248</sup> The leniency of "the husband is in town" does not apply in the case of a female patient repeatedly examined by the same physician.<sup>249</sup>

The prohibition of seclusion also applies in regard to a woman in labor.<sup>250</sup> Even at night, there is no prohibition of seclusion in an automobile.<sup>251</sup> Nor is there a prohibition in an elevator even on high floors.<sup>252</sup> The prohibition does apply, however, to an old man secluded with a woman other than his wife or daughter.<sup>253</sup>

#### e. Other Topics

Although Rabbi Auerbach does not consider smoking as a violation of biblical law, he strongly advises people not to smoke.<sup>254</sup>

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243. *Ibid.* #4.

244. *Nishmat Avraham, Yoreh De'ah* 298:12:5.

245. *Shaare Tevilah* #35:4.

246. *Ibid.* #34:4.

247. *Ibid.* #35.

248. *Nishmat Avraham, Even Haezer* 22:1.

249. *Ibid.*

250. *Responsa Minchat Shlomo* #91:21.

251. *Ibid.*

252. *Devar Halacha*, beginning of the book.

253. *Nishmat Avraham, Even Haezer* 22:2.

254. *Nishmat Avraham, Orach Chayim* 51 1:1 and *Choshen Mishpat* 155:2.

A widowed woman must wait ninety days before remarrying in order to differentiate between a pregnancy and baby resulting from the deceased husband and her new husband. This law even applies to a woman who used contraception and to a woman who underwent a hysterectomy.<sup>255</sup>

### Epilogue

Rabbi Emanuel Feldman, editor of the Rabbinical Council of America's journal of orthodox Jewish thought *Tradition*, wrote a eulogy for Rabbi Auerbach entitled "A Death in Jerusalem: the Real World."<sup>256</sup> Rabbi Feldman eloquently captured the essence of Rabbi Auerbach when he wrote:

*"Here was a man who shunned all publicity, had no official titles, never granted media interviews, had no PR office, issued no bulletins or journals, assiduously discouraged any view of himself that might tend to ascribe anything but ordinary human abilities to him, was not even mentioned in Jewish encyclopedias, and had never left the borders of the Holy Land. And yet the myriads of religious Jews around the world felt so intimately connected to him that hundreds of thousands spontaneously flocked to pay him a last tribute on just a few hours' notice.*

*Clearly, it was more than prodigious scholarship that was being honored here; it was what lay beyond that learning. The people were responding to qualities which have grown increasingly rare; genuineness, wholeness, straightforwardness, impeccable integrity — what our tradition calls an ish emet [man of integrity]. What touched them was the awareness that not only were his halachic rulings avidly sought out and followed by believing Jews, but that this quiet, self-effacing man was the embodiment of this emet.*

*In him there existed a remarkable fusion of the rigorous intellectual discipline of the talmid chacham [Torah scholar] and the fatherly love for his people. The emotional outpouring of respect and affection for him was an echo of his respect and affection for each of them.*

*For it was not only halacha that occupied his days.*

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255. *Ibid.* 13:3.

256. Vol. 29 No. 3, Spring 1995, pp. 1-4.

*It was the people to whom it applied. They were instinctively drawn to a man whose primary goal was to understand G-d's will as reflected in the Torah, whose life was free from the dross of politics, power, and material ambition, who had no personal agenda, who was open and accepting of various points of view within the halachic framework, and who gave them warmth and attention while asking nothing in return. He was wise and witty, possessed of an incisive mind and an unerring insight into people. Both world-class scholars and ordinary amcha [our people] felt that few if any were better equipped to guide them both on arcane halachic matters and on the mundane issues which beset every human being. Inundated with inquiries from everywhere, he was nevertheless accessible to anyone who knocked at his door and needed face-to-face counsel or comfort.*

*He was, in a word, the embodiment of Torah; majestic yet simple, transcendent yet worldly, old yet profoundly new, rigorous yet compassionate, multi-faceted yet natural and artless. Whatever advice he would offer was inevitably refined through the purifying filter of his learning, piety, love, and halachic discipline..."*

Source: The Schlesinger Institute for Jewish Medical Ethics