

MACHON PUAH

The Expert Doctor

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Last time we saw that someone acting according to the Beit Din's instructions cannot be held responsible if their actions caused unfortunate harm or death. However if the Beit Din's emissary was overly zealous and caused damage he is held responsible. That which lies outside of the Beit Din's jurisdiction is the personal responsibility of the perpetrator.

We saw that the same logic can be applied to medical treatment; when normative and accepted practice is administered then the doctor is not held liable for any unfortunate outcomes. But when the doctor treats using experimental and untried methods such as gene therapy they are responsible for the unwanted outcomes and detrimental side-effects of the treatment.

A possible source for this is the way the doctor is described in the Tosefta; the doctor is called an expert who is licensed by the Beit Din, and it is this doctor who is permitted to practice medicine and is exempt from punishment even if the patient dies. A major factor is the doctor's expertise and this is what enables the doctor to practice medicine.

Medical expertise in Talmudic times was limited to medical experience; doctors were trained as apprentices to other, more experienced practitioners. The only way to achieve any expertise

in medicine was to observe how the older doctor worked. This practice continued for centuries and even millennia. Only in 1768 did Louis XV abolished apprenticeship as the sole training for surgeons and then medicine and medical training become more of a science and less of an art.

As such for the doctor to be an expert in Talmudic times, and for many subsequent centuries, one had to have seen another doctor practice medicine and learn from them. Therefore the definition of expertise is experience; the doctor who follows convention and standard practice is not held responsible for inadvertently causing damage, even serious damage including those resulting in a fatality. But the doctor cannot be termed an expert if they try something new that they did not previously observe. They may be permitted to try it and their experimentation may lead to innovation and successfully conquering new frontiers, but they will be held liable for any damage that they cause.

When dealing with new technologies, such as gene therapy, the halacha does not necessarily limit their use but does hold the doctor responsible for any outcome. This is a unique way of looking at legislation regarding scientific research. But there are other considerations when discussing gene therapy.

More on that next week.