

May My Daughter Be My Dentist?

Wounding a Parent & Halachic Applications

The prohibition against wounding a parent has significant practical applications in contemporary life. Consider a scenario in which an individual requires dental work and his daughter happens to be a dentist. May the daughter perform the dental procedure on her father? This question touches on the fundamental halachic prohibition against wounding one's father or mother, and its resolution requires careful analysis of classical and modern halachic sources.

The Torah establishes in Shemos 21:15, that one who strikes his or her father or mother is subject to capital punishment. The Mishna in *Sanhedrin* 85b, states that one is liable for striking a parent only if the blow causes a wound. The Gemara in *Sanhedrin* 84b, discusses whether it is permissible for a son to perform blood-letting for his father. Two arguments are presented in favor of leniency. First, the prohibition is part of the broader mitzvah of *v'ahavta l'reiacha kamocha*, love your fellow like yourself. Rashi explains that we aren't prohibited from causing a wound in situations where we would not object to having the same done to us. Second, the Torah never prohibited

wounding when it serves a therapeutic purposes.

Nevertheless, other amoraim were stringent on the matter. While it may be technically permissible, there is a concern that the child might accidentally cause an unnecessary wound. The Gemara asks: wounding someone is prohibited regardless of whether the victim is a parent or someone else. If we are concerned that a child might accidentally wound a parent, should we not likewise be concerned that any practitioner might accidentally wound a patient? The Gemara answers that accidentally wounding a parent is more severe than accidentally wounding another individual.

The rishonim offer different interpretations of this Gemara's ruling. Both Rif, *Sanhedrin* 19a and Rambam *Hilchos Mamrim* 5:7 write that it's preferable for a child to avoid performing a medical procedure on a parent. Rambam adds that if no one else is available and the parent requires a treatment, the child may perform whatever procedure the parent permits. R. Achai Gaon, in his *She'iltos* 60, takes a more stringent position, ruling that a parent's permission does not suffice in this case, since a parent



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may waive rights (*mechila*) to *kavod* (honor), but cannot provide *mechila* for a child to wound him. *Shulchan Aruch*, in *Yoreh De'ah* 241:3, writes that a child should not perform a procedure on a parent if it will cause wounding. This includes removing a splinter, bloodletting, or any medical procedure. Rama quotes Rambam's opinion that if no one else is available and the parent is in pain, it is permissible.

The Ba'alei HaTosafos (Tosafos, *Sanhedrin* 85a and Tosafos Shantz there) raise a fundamental question regarding this entire discussion: Why do we not employ the principle of *davar she'aino miskavein* (an unintended consequence)? Since the child's intention is to heal rather than to wound, and any wounding is merely an unintended consequence of the healing process, we should follow the opinion (*Beitzah* 23b) that

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davar she'aino miskavein is permitted. There are three answers among the rishonim.

First, Tosafos suggest that even if the practitioner determines at the outset that the procedure may not cause wounding, circumstances may change during the procedure such that it becomes a *pesik reishei* (an inevitable consequence), and therefore the leniency of *davar she'aino miskavein* would no longer apply.

Second, Tosafos Shantz suggests that when a child removes a splinter from a parent, there may be two ways to accomplish this: one less aggressive, and which may not draw blood, and another that is more effective, but also more aggressive and will inevitably draw blood. If the child chooses the more aggressive option on the assumption that the parent doesn't mind, when in reality, the parent would prefer the less aggressive option, it is a violation.

Third, Rabbeinu Nissim, in Chiddushei HaRan, suggests that because of the severity of the prohibition against wounding a parent, the leniency of *davar she'aino miskavein* doesn't apply.

The issues addressed by the rishonim have practical implications. To what extent do we rely on *mechilah* when the parent does not mind being wounded by the child? As we noted, R. Achai Gaon is of the opinion that *mechilah* is ineffective in this context. *Minchas Chinuch* (43:3) suggests that according to the Rambam (*Sanhedrin* 26:6), the limitation on

mechilah applies only after the child has violated the prohibition; at that point, the parent no longer has legal authority to grant *mechilah*. However, if the parent grants *mechilah* in advance, it is effective and the child would not be considered in violation of the prohibition.

As such, the whole discussion in the Gemara is about a concern that the child will perform the procedure in a more aggressive manner than the parent consented to. If, however, the parent gives blanket consent to the child to do whatever is necessary, then it is completely permissible. R. Shlomo Zalman Auerbach, in *Minchas Shlomo* 1:32, supports the position of *Minchas Chinuch* from a different comment of Rambam. Rambam, *Hilchos Chovel* 5:1, writes that the prohibition against wounding applies when it is done *derech nitzayon* (in the manner in which people fight). The implication is that if it is done for therapeutic purposes and permission was given in advance, there is no prohibition. While Rambam is discussing the general prohibition against wounding someone else, not about wounding parents, it seems that the parameters of both prohibitions are the same. Rav Shlomo Zalman is reluctant to fully accept *Minchas Chinuch's* approach as a matter of halacha, but he says that it can be

used as a mitigating factor when there are other reasons to be lenient.

What if the parent specifically prefers the child to perform the procedure and not someone else? The rishonim (Rabbeinu Nissim and Nimukei Yosef), commenting on the Gemara in *Nedarim* 41b, note that halacha gives weight to a patient's preference to use a particular physician, even when the matter is not considered life threatening. R. Mordechai Yaakov Breisch, *Chelkas Yaakov* 2:39, asks: Why doesn't the Gemara factor in the patient's preference in discussing whether a child can perform a procedure on a parent? He answers that the cases in our Gemara all involve simple procedures such as removing a splinter or draining pus from a wound, which don't require any expertise. If indeed expertise is required, we would factor in patient preference as grounds for leniency.

While the prohibition against wounding a parent remains a serious halachic concern, the analysis of the rishonim and acharonim reveals that there are a number of mitigating factors. These include the unavailability of alternative practitioners, the parent's explicit consent and preference, the therapeutic nature of the procedure, and the level of expertise required.



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