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# Halachic Perspective on Involuntary Psychiatric Care of the Mentally Ill

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**Abstract** According to most mental health statutes in force around the world, doctors may involuntarily treat only acutely psychotic patients who present some danger to themselves, others or property. Chronic patients who, owing to volitional or cognitive defects, present a similar danger may not be thus treated. This may cause situations to arise where dangerous chronically ill patients who refuse treatment may cause serious harm because of physicians' inability to treat them. This article suggests changes to contemporary mental health statutes, in line with Judaic Halachic codes, which view all mentally ill patients as potentially harmful, and require physicians to treat – voluntarily or involuntarily – all mentally ill persons.

## 1 CIVIL COMMITMENT IN CIVIL LAW

Contemporary mental health statutes recognize either 'need for treatment' or 'dangerousness' as the criterion for civil commitment. Israeli law, which recognizes dangerousness as the primary criterion for civil commitment, stipulates that a patient may be hospitalized if

> 'he is mentally ill, and as a result of his illness his judgment or reality testing is markedly impaired, and:
> (1) he poses a danger to himself or others; or
> (2) his ability to care for his basic needs is seriously impaired; or
> (3) he imposes severe mental anguish on others; or
> (4) he seriously damages property'.[1]

Thus, dangerousness includes 'mental illness' and danger to self, others or property. Finland has adopted a statute which recognizes either the dangerousness or the need for treatment criterion, and stipulates that an individual may be hospitalized involuntarily if 'because of his mental illness he is in need of treatment and failure to receive treatment would essentially exacerbate his mental illness or seriously endanger his health or safety or the health or safety of others'.[2]

In America, where most states still statutorily recognize the dangerousness criterion,[3] many clinicians believe that 'need for treatment' supersedes 'dangerousness' as a ground for civil commitment. As McNeil et

al[4] have reported, 'despite legal pressures to focus on overt behaviors such as violence as a basis for . . . civil commitment, clinicians . . . did not allocate inpatient resources to preventively detain persons unlikely to benefit from treatment. Rather, they hospitalized the most severely disturbed patients with . . . disorders for which a widely accepted therapeutic armamentarium exists'. Partially as a result of criticism by both courts and mental health professionals,[5-14] many states in the United States have begun drafting new 'need for treatment' statutes which also use the undefined term 'mental disorder' as a prerequisite for civil commitment. For example, the Stone criteria for civil commitment require a 'reliable diagnosis of mental disorder' and 'immediate prognosis . . . of major distress'[15] as prerequisites for involuntary hospitalization.

Despite all of the above, many dangerous mental patients are not hospitalized. This may be for either or both of the following reasons:

a The Finnish,[16] Israeli and proposed American statutes all interpret 'mental illness' as synonymous with 'psychotic'. In cases where danger to self or others is the result of chronic impairment of judgment or volition, the law does not allow for the civil commitment of patients who refuse treatment.

b Clinicians are reluctant to detain dangerous persons who are seen to be unlikely to benefit from treatment, despite legal imperatives.

Existing statutes are extremely limited both in their definition of mental illness and in the authority afforded to physicians to treat the mentally ill. The following section of this article presents the Halachic perspective on these issues, and demonstrates the differences between the current statutory and the Halachic approaches to mental illness.

## 2 MEDICAL TREATMENT ACCORDING TO HALACHA

Halacha, the moral and judicial code of Jewish law, has been constantly modernized over the past 1 800 years, and is pertinent to all areas of modern life – including involuntary medical care of the mentally ill.

Halacha views the saving of human life as a primary goal of all medical intervention. There is no difference between 'temporary' cures which merely prolong life and 'permanent' cures which save life. The *Shulchan Aruch*[17] (*Yoreh Deah* 336:1, *Orech Haim* 328:1) proclaims that one who denies himself or herself medical care on any pretext is considered to be a murderer. Rabbi Raziel[18] has concluded that:

> 'There is no one who argues with the fact that a sick person is commanded to do all he can to save himself from his illness, and if he does not he is considered a murderer, and he is treated as one who killed himself.'

Rabbi Eliezer Waldenberg [19 20] proposed that a doctor must heal anyone with a disease which he or she cannot heal himself or herself even if the disease is not life threatening in and of itself. In addition, anyone legally empowered to force a sick person to go to a doctor must do so, even if the person refuses. In his opinion, this imperative holds true even in cases where there are clinically acceptable inherent dangers in the drug used to treat the disease (for example extrapyramidal syndrome or the possibility of contracting neuroleptic malignant syndrome with the use of neuroleptic drugs).

Rabbi Waldenberg has further ruled that it is permissible to give terminally ill patients morphine to ease their pain – even though the drug will not heal them and may even shorten their lives,[22] and that such a drug may even be given against the patient's will in cases where no known cure exists for the disease, for by reducing pain and psychological strain one brings about an improvement in the patient's condition – and his or her life may even be prolonged thereby.[23]

There are, however, those who argue against this ruling. Rabbi M Feinstein has stated that if a patient refuses medical treatment and the danger inherent in the treatment is greater than the danger inherent in the illness, then the treatment may not be administered under any circumstances.[21]

## 3 MENTAL ILLNESS AND HALACHA

### 3 1 Definition

The Halachic equivalent of the term 'mentally ill' is *shoteh* (madman). The *Tosefta* (*Terumoth* 1:3) defines a *shoteh* as one who goes out alone at night, who sleeps in graveyards, tears his clothes, or loses all that is given to him. If he is intermittently mad and not mad, he is considered to be sane during the period when he is not mad. The Talmud in several places (for instance *Hagiga* 3b) affirms that it is sufficient for any one of the above-mentioned criteria to be present to declare a person a *shoteh*. The Halacha (Maimonides *Laws of Bearing Witness* 9:9; *Shulcharan Aruch: Hoshen Mishpat* 35:8 to 9) deals specifically with *shoteh*:

> 'A madman may not bear witness . . . . Not only a madman who goes naked and breaks things and throws stones – but anyone whose mind is confused and is found to be always confused regarding a certain matter, even if he asks and answers accurately in other matters, he may not bear witness, and he is considered [to be] a madman.'

Another group of madmen, which is listed but not defined, consists of 'the terrified, the excited, and the extremely crazy'. This group is characterized mainly by inappropriate emotions (Maimonides *Laws of Bearing Witness* 9:10; *Shulcharan Aruch: Hoshen Mishpat* 35: 8 to 9). The *Shulcharan Aruch* also takes the imminent relapse of the chronically ill into account (*Hoshen Mishpat* 235:22; *Pischay Tshuva, Yoreh Deah* 1:5(10)), and assumes that a temporarily sane *shoteh* may again become mad at any moment.

From these passages we see that the Halachic definition incorporates cognitive, volitional and affective components into mental illness and that a person may be considered to be 'mixed up' even between acute outbreaks of an illness. Cognitive defects are taken into account, as is the cycle of remission and acute psychosis.

Hallucinations and delusions, which form the core of a diagnosis of mental illness today, are not regarded as definite signs of mental illness. Rather, similar to Schneider's[24] and Jaspers's[25] models of delusional thought, Halacha looks at the way thoughts are held and expressed instead of the content of the thoughts – again putting emphasis on cognitive ability.[26]

Maimonides did not regard suicidal ideation as indicative of mental illness. This is clear from his *Laws of Divorce*. One who is mentally ill may

not divorce his wife. If a man instructs that divorce papers be drawn up, and then jumps off a roof and kills himself, the divorce is valid (Talmud *Gittin* 67b; Maimonides *Laws of Divorce* 2:13). The question of mental illness or derangement is not even considered. Others, however, do view suicidal ideation as indicative of mental illness. According to Rabbi M Spira, the criterion for insanity is the absence of free choice (volition) and rational judgment (cognition). According to him, the best test of these facilities is a man's ability to protect himself or his property. One who lacks the basic instinct to safeguard himself is considered to be insane, and therefore all those who exhibit suicidal ideation would also be considered to be insane.[27] In any case, suicidal ideation is regarded as a bona fide life threatening situation, and therapeutic intervention in such cases is permitted even in violation of the sabbath.[28 29] For this reason, all Halachic principles which pertain to medical intervention also pertain to suicide prevention – first and foremost being the principle of forced intervention.

### 3 2 Medical Treatment

Rabbi Waldenberg has in several places pointed out that mental illness is like any other illness.[30] The mentally ill are considered to be dangerous to themselves and to others even when no overt suicidal or violent behaviour has been manifest. Rabbi Feinstein, in ruling that a mother, who psychiatrists recommended should not fall pregnant after the birth of her second child, be allowed to practise birth control, wrote that:

> 'Insanity is a danger not only to herself, but also to her children, for even in one whose derangement is not of the violent sort, she may change and desire to do harm to herself or to her children.'[26]

Rabbi Waldenberg agreed that mental illness may be cured by any known method – even if that method is in itself dangerous or has serious side-effects.[31] For this reason he agreed that lobotomies could be performed on dangerous mental patients – in the days when such operations were an accepted method of 'curing' such patients. Although the matter has not been directly addressed, evidence points to the fact that it is permissible for such cures to be effected against the patient's will, as is the case with other diseases. This is especially true in the light of the view that regards a cognitive (the ability to make rational decisions) defect as a cardinal sign of mental illness. Even though modern medicine cannot totally cure mental illness by any means, the object of keeping a person from relapsing into an acute psychotic state, or helping him or her to recover from one, is considered to be *pikuah nefesh*, that is life saving.

### 3 3 Summary

The following points can be summarized from the discussion above:

a Doctors are commanded to heal the sick even against the patient's will.

b This is true of all types of illness, including mental illness.

c Mental illness is defined by cognitive, volitional and affective dysfunction, both in the acute and residual phases.

d With mental diseases which come and go (for instance affective disorders, schizophrenia), the patient is always considered to be in imminent danger of deteriorating into an acute psychotic state.

e The mentally ill are considered to be potentially dangerous even if no overtly dangerous behaviour has been manifest.

From this it can be concluded that Halacha recognizes both need for treatment and dangerousness standards regarding involuntary medical treatment and hospitalization of the mentally ill in that it provides for involuntary care of acutely psychotic *and* chronic patients with cognitive, affective and volitional defects, in order to save them from entering into an acute psychotic state or harming themselves or others.

Halacha is both a judicial and a moral code. Its main concern is the preservation of human life, which is perhaps the most important of all Halachic imperatives. It fully recognizes the severity of involuntarily committing someone to medical care and to therapy by drugs with dangerous side-effects, such as the neuroleptic drugs in use today. For this reason it commands that only the most highly trained specialists make such decisions. However, it does not balk at the risk or the responsibility.

### 3 4 Case Example

The following case illustrates one critical difference between the civil and Halachic approaches to mental illness: A, a 33-year-old unmarried man, had been diagnosed at age 20 as suffering from schizophrenia, and had been intermittently hospitalized for 13 years. In the four years preceding the hospitalization described below, he had been hospitalized five times. Between hospitalizations he received regular injections of Modiket. He was admitted to the closed psychiatric ward in an acute psychotic state, after a near successful suicide attempt by hanging. He received antipsychotic drugs, the acute phase passed but the suicidal ideation and cognitive and affective defects remained. After one month of hospitalization he demanded to be released, and as he did not meet Israeli standards for involuntary hospitalization, he was released against medical advice. Ten days later he successfully committed suicide, by hanging.

Had A been acutely psychotic, he would undoubtedly have been kept in the hospital against his will. However, because the disease was in remission, doctors were forced to release him, despite the connection between the post-psychotic defects and the suicidal ideation. He was consequently deprived of care which would probably have saved his life. Had the existing statutes been modelled on need for treatment or on Halachic guidelines, A's chronic illness and suicidal ideation would have enabled doctors to treat him involuntarily, thus saving his life.

## 4 CONCLUSION

This article recommends that existing civil commitment laws be modified along the lines suggested by Halacha, so that any potentially life threatening situation which is the result of cognitive, volitional or affective impairment in chronic mental patients would constitute a valid ground for civil commitment. The same should apply to similar patients whose refusal

of treatment puts their mental health in danger of deteriorating. The proposed statutory provision could read as follows:

> 'A person may be referred for psychiatric treatment against his will only if:
>
> a he is suffering from an acute or chronic mental illness; and
>
> b he refuses psychiatric treatment; and
>
> c as a result of this refusal he poses a danger to himself or to others, or there is a danger of deterioration in his mental condition.'

Assessments of such patients should be made in accordance with their past (if known) psychiatric history, as well as their present behaviour. This is in keeping with current knowledge regarding dangerousness assessment, which holds that patterns of past behaviour are the best predictors of future behaviour,[32] and that clinicians are able to make valid short-term assessments of the risk of violence based on past behaviour and mental status on examination.[14] For example, in the case of A (discussed above) the patient's past suicide attempt, known psychiatric history (chronic schizophrenia) and present mental status (cognitive defect and suicidal ideation) would provide grounds for involuntary medical treatment. In this way, doctors may do what they are morally and professionally obligated to do – heal the sick and save lives.

**Notes**


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2 s 8.2 Finnish Mental Health Act 1116 of 1990.

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19 Rabbi Eliezer Waldenberg is a recognized authority on medico-Halachic issues, and serves as a consultant to several hospitals in Israel. The texts cited are from his collected responses, *Tsiz Eliezer*. Citations below list volume number, response number, and the year of writing. All responses are in Hebrew.

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27 *Sefer Or Hayeshorim* 49–56.

28 *Igros Moshe* 1 127 1927.

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