



## Maimonides and the Ethics of Patient Autonomy\*

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A strong consensus has emerged in recent years on the rights of the patient to autonomous decision-making. Indeed, this principle is usually understood to be one of the basic concepts of modern medical ethics. Medical autonomy is predicated on a number of different factors. There has to be an understanding by physician and patient of the specific issues related to the problem and what the practical options are for treatment. The patient must consent to treatment and has the right to refuse futile or burdensome therapies. Aspects of the doctor-patient relationship may limit autonomy; for example, deficiencies in information sharing and informed consent. Informed consent implies that the doctor has provided the patient with the medical information required, in a form that the patient can understand and act upon appropriately. The relationship may be limited further by failings in the medical approach to vital diagnosis and management decisions. There is also a fear that patient advance directives, often drawn up many years ahead of specific health problems in an attempt to enhance patient autonomy, may not accurately reflect the patient's requirements when the time for ethical decision-making arrives.

In the Jewish context it is commonly understood that autonomy is subordinated to other principles such as the right to life, life with dignity, the need to safeguard health and, above all, the sanctity of life. The writings of the great Jewish medieval physician and rabbi, Moses Maimonides, the Rambam (1138–1204), cover a wide range of medical subjects which can give guidance to modern doctors concerned about such serious medical issues. This paper examines the scope for patient autonomy within Maimonides' medical practice, setting it in the context of his medical, *halakhic*<sup>1</sup> and philosophical literature.

### Maimonides and the practice of medicine

Although the concept of evidence-based medicine did not exist in Maimonides' time, his writings indicate that he drew amply on the sources of the past, especially from Galen whom he considered the greatest physician of all time [1]. He also derived much from Hippocrates, and used this information, supplemented by

his own careful observations, to build up his own pharmacopoeia of therapies, employing what we might today call his clinical and therapeutic guidelines, which would prove the most effective given the treatment limitations of the period. He took great care in drafting his medical aphorisms and was aware of the danger of making a generalization from a single inference, criticizing Hippocrates when he did so [2].

Maimonides was the paradigm of the medieval physician in that his medical studies and practice were conducted before the era of university-based learning. It is likely that his medical knowledge was gained not by working long years as a physician's apprentice, but in the general acquisition of knowledge common to the main contemporary disciplines within philosophy and science. Maimonides considered that "the practice of medicine is an excellent way to develop the intellect and the character, and acquire knowledge of God, blessed be He. And when one becomes genuinely successful, his study and research are among the greatest types of service of God" [3]. As author of extensive medical writings, as well as voluminous halakhic codes and philosophical tracts, Maimonides provides an enduring legacy for every Jew, and especially for those with critical, scientific and medical outlooks.

While it is legitimate to consider how Jewish physicians and rabbis of past generations dealt with profound medical issues, we must be careful not to ascribe to them ideas that can only be understood in terms of contemporary medicine. Maimonides himself showed himself to be acutely aware of this problem, indicating that it was inevitable that practitioners can only function within the conceptual medical and scientific framework of the day. Indeed, he indicated that the statements of the Sages with regard to scientific matter "were not based on the prophets but on the knowledge they either possessed themselves or derived from contemporary men of science" [4].

The legacy of his comprehensive medical writings speaks to us today with their clarity of expression and simple humanity. His account of his daily life in Egypt with its extreme time pressure, which adversely affected his own health, his household and his own program for learning and development, still embodies the medical calling for many today [5]. Further, since all his religious and philosophical writings are suffused with medical observations, examinations of human personality and characteristics, we have to look at the enduring presence of Maimonides in

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<sup>1</sup> Relating to *Halakha*, the collective corpus of Jewish religious law

every aspect of Jewish life, both intellectual and religious. In other words, he speaks to us not in one area of Jewish medical practice but in an all-encompassing medical framework familiar to the modern mind.

### **Maimonides and healing**

Maimonides considered that the requirement of the physician to heal the sick is a Torah obligation deriving from the general principle of returning lost property, and this is recorded in his *Commentary on the Mishna*, though not in his later code of Jewish law, the *Mishneh Torah* [6]. While the obligation to treat devolves on the doctor it has been observed that there is no such requirement on the patient to seek treatment or accept medical advice implied in this principle. However, Maimonides observed that a person who endangers his own health, believing that to be of no concern to others, should be punished [7].

Maimonides believed that health was only to be regarded as a means towards perfection of the soul and the intellect. It is only the person with the healthy body who can go on to develop their

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*Maimonides believed that every individual has the capacity to make autonomous choices and that the general objective of the Torah is well-being of the body, to be followed by well-being of the soul*

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intellect and spirituality as no one can undertake these activities without a sense of mental and physical well-being [8]. Indeed, the thrust of this argument is that the pursuit of health is part of the quest for the religious person, given the noble aims that such pursuit will permit. Maimonides was also acutely aware of the psychological factors that could improve the chances of effecting a cure, and indicated that part of the path required for a proper equilibrium of health was due attention to the *mitzvot*<sup>2</sup> [9]. With the more effective modern therapies available today there is a greater confidence in medicine, and many people show less recourse to a religious dimension in healing. Nevertheless, Jewish practice still accords due respect to God's role in the healing process while accepting that medical therapy is sanctioned by Halakhah. Maimonides' consistent attitude is that just as we eat and say our blessings when we are hungry, we should also cure disease and thank God that we have the appropriate treatments available [10,11].

While Maimonides was widely respected as possibly the leading physician of his day, the remedies that were available to him, apart from some medicaments suitable as analgesics and laxatives, were hardly likely to prove successful in the wide range of illnesses that he would have had to deal with. While

his medical work was set within the context of accepted medical traditions, rather than within traditional Jewish sources, he was not afraid to criticize current dogma and establish the validity of his own views on the widest range of medical issues, both clinical and ethical, while maintaining a characteristic humility and honesty. He wrote that one should be cautious in accepting the opinions even of someone who is authoritative, and that one should "investigate and weigh this opinion or that hypothesis according to the requirements of pure logic, without paying attention to his contention that he affirms empirically, (irrespective of) whether this assertion is advanced by a single person or by many who adhere to that particular viewpoint" [12].

Given the paucity of truly effective medication in the modern sense, it is perhaps salutary to see the enthusiasm of the medieval patient for the rudimentary medical care available. His level of success as a physician can only be attributed to his deep compassion for the patient, his concern for their welfare, and an abiding desire to obtain the best treatment then available. Perhaps one of his most useful comments was that, quoting Galen, he recorded that when the Greeks did not know how to treat a disease their practice was to let nature take its course, and in effect do nothing [13].

### **Maimonides and autonomy for doctor and patient**

The writings of Maimonides display an understanding of the pressures facing both physician and patient in their quest for treatment, and the factors that may limit the free choice of both in the determination of the best course of action. Whether the problems come from the lack of knowledge, misapplication of the current understanding of science or medically erroneous opinions, it is the duty of the physician to present the patient with information that will overcome the difficulties standing in the way of a cure.

Jewish law places supreme value on the preservation of human life and cautions strongly against placing oneself in danger. According to Maimonides and other religious codifiers, the principle underlying this value is that a person's life is not his or her own but is the property of God [14]. While other medieval halakhists, such as Nachmanides and Ibn Ezra, saw a dichotomy between mandating medical treatment and seeking divine therapy, Maimonides saw no such dilemma. With his rationalist views he had no reservations about the legitimacy of human healing. We have already seen his view on the physician's duty to heal. Here, he is encouraging the patient to understand that he should pursue health, not just for the personal benefits it will bring, as ultimately its value will be in the service of God. Indeed, many have seen his strongly held views as being at odds with those contemporary alternative, or complimentary, therapies that do not have the evidence base of conventional medicine.

Maimonides also understood the need for the patient to have the best possible information when contemplating his attitude to treatment. He therefore gives approval to the exchange of information between physicians conferring together to give an opinion to the patient. At the same time he deprecated the

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<sup>2</sup> Collection of 613 commandments or precepts in the Bible and others of rabbinic origin that relate chiefly to the religious and moral conduct of Jews. Together they constitute Halakha.

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custom, obviously present in his day, of the patient going from one doctor to another in the hope of achieving a better, but probably unrealistic, prognosis although maybe one the patient might prefer to hear. This he describes as leading to confusion for patient and doctor, recriminations between physicians and weak thinking, or what we might call diminished responsibility, as one doctor might think that others would get the credit for any improvement in the patient's condition while he would get the blame for any deterioration [15].

Maimonides also gave his patients some scope for personal autonomy. He records how he had indicated to a Muslim patient that the treatment for his condition included the use of wine, a product forbidden to Muslims on religious grounds. Maimonides was aware of the religious problem for the patient in taking the wine but ruled that the decision to accept the therapy rested with the patient, writing that "religion orders compliance with that which is helpful in the world to come and compels it, and prohibits that which is harmful in the world to come, and punishes for it. Medicine, however, does not coerce thereto neither does it punish for it. The matter...is left to the patient who is free to choose" [16].

We can also see in Maimonides' *Treatise on Asthma* how his personal attitude to his own medical abilities, "stating the truth as it is," not out of false modesty or by minimizing his abilities, may have improved his patient's trust in his judgement and guidance [17]. The sick patient is peculiarly vulnerable and the skilful physician must carefully balance the patient's needs against his fears and desires. In this final chapter of the *Treatise* Maimonides describes his approach in the following way: "...if one searches but cannot find a perfect physician and one is also in doubt about the illness it is proper to rely solely on nature." Maimonides goes on to say that one should not thereby conclude that he is "the one in whose hands you should entrust the conduct of your body and soul. In fact, I call on Heaven to be my witness that I myself know that I am among those who are not perfect in this art of medicine and also recoil from it because of the difficulty, in my opinion, of achieving its goals."

### **Maimonides and free will**

Maimonides believed that every individual has the capacity to make autonomous choices whether for good or ill and that this freedom is a fundamental Torah principle [18]. He also believed that different people exhibit different behavior and character traits, which can have a profound effect on how they might act in any given situation. Clearly, in the emotionally charged atmosphere of significant illness these traits may carry increased importance. Maimonides' view was that the general objective of the Torah is the well-being of the body, which should be followed by the well-being of the soul. He was prepared to concede that God grants full free will on the individual, even though He knows how it will be employed, giving scope for divine knowledge and human freedom [19]. There may be conflict between human freedom and divine knowledge, but Maimonides believed that the human ability to make free choice gives a meaning and purpose to life with scope to reward the good and punish the evil.

Even with free will, the ability to make the correct health choices for oneself is predicated on many factors. A person's psychological make-up may have a number of different character traits and one should always strive to make the best of these abilities to arrive at the choice that will produce the best health outcome. Maimonides has much to say about such behavior patterns as miserliness, anger, arrogance and frugality, and commends the middle path. Adopting the middle path positions the patient carefully between extremes of behavior, enabling him to make a reasoned, rather than extreme judgement about medical advice.

Maimonides subscribed to the view that, for the religious believer, autonomy is limited considering that "a person's soul is not his soul but rather property of the Holy One, blessed is He" [20]. He counseled that it is a positive commandment to remove obstacles to well-being, emphasizing the requirement to take care of oneself and one's soul [21]. Autonomy has made medicine more sensitive to the needs and wishes of the patient and has reduced medical paternalism – but it needs to be exercised appropriately. Coercive action has sometimes been proposed when the patient refuses treatment in a situation where there is no

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*Aspects of patient autonomy form a consistent aspect of Maimonides' approach to treatment and care, obliging the patient to obtain the best medical opinion and then seek halakhic guidance*

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agreement between physician and patient and yet the medical issues are clear-cut, the required action is morally neutral and the procedure carries no risk to the patient [22]. While a notion of coercive consent can be identified within the Jewish tradition it is easy to see that this would never be an easy option. Where coercion is required, for example in psychiatric practice, it needs legal backing to be successful. In Israel, the Patients' Rights Law of 1996 gives the Hospital Ethics Committee the right to impose treatment where it is reasonably satisfied that the refusing patient will give retrospective consent after the therapy is completed [23]. This, of course, is a right that will be imposed very infrequently – medical issues are rarely so clear-cut, and in any case there will always be a reluctance to institute force against a competent patient.

Lord Jakobovits once commented that such coercive action might be avoided were the information provided given carefully enough, possibly modifying or withholding information to avoid the risk of patient refusal. However, it could be argued that if the patient believed that his/her physician was acting in such a paternalistic way then the patient might well have grounds to refuse treatment, even if it meant forgoing the opportunities for a cure [22]. Thus, whether it is for reasons of patient autonomy or the reluctance of the doctor to impose therapy, which could cause the patient serious psychological harm, a patient's desire to refuse therapy is likely to be respected.

The point that Judaism seeks a balance in patient autonomy has also been emphasized by contemporary Jewish physicians. Glick notes that too many physicians are guilty of overconfidence and arrogance in presenting diagnostic and therapeutic options to patients, often greater than the evidence can sustain, making it impossible for the patient to receive adequate information on which to base the therapeutic judgment [24]. The late Benjamin Freedman used the analogy of the patient acting as a *shomer* (guard) for his body – an act requiring both patient and physician to be competent and conscientious in ensuring that the religious aspects of safeguarding health are met [25].

### Ethical consequences of Maimonides' practice of medicine

While patient autonomy is limited in Judaism there is still room for the patient to make up his or her own mind where there is medical doubt or the proposed treatment is highly risky or burdensome. The religious sources for patient autonomy are well documented. One has an obligation to protect one's health, based on the biblical imperative in Deuteronomy 4:9 "only watch yourself – watch your soul," which Maimonides says means safeguarding health [26]. This also allows a patient to seek a high risk procedure where there is a prospect of long-term survival. Conversely, when a terminally ill patient is offered futile treatment and the burden of therapy far exceeds the benefit, the patient may not be required to avail himself of these measures [27,28].

Maimonides's writings pose numerous ethical consequences. He was a firm proponent of the duty of the doctor to heal, pointing out that the physician has a special role, because of his medical training, to restore the health and well-being of the patient, basing his view on the sense of restoring the individual's lost property [29]. The patient's obligation is to obtain expert and reliable medical opinion regarding diagnosis and treatment and then seek authoritative halakhic guidance. Only then would he be able to exercise his free will, having surrendered a measure of autonomy, and provide truly informed consent in keeping with his religious beliefs [30]. Maimonides was also clear that one who transgresses against those rabbinic prohibitions, which are designed to safeguard life, is liable for punishment [31].

Maimonides listened carefully to his patients and operated within halakhic parameters. He expressed the view that correct behavior for both patient and doctor implied that medical diagnosis and treatment should be safe and that the response of the patient should be careful acceptance of the therapeutic options. He was, however, also aware that many physicians could not provide such security for their patients and that there would be constraints to patient consent to treatment. Patient autonomy is a modern concept and central to secular contemporary codes of ethical practice, but aspects of its parameters, imbued with a religious perspective, can be understood as forming a consistent aspect of Maimonides' approach to treatment and care.

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