

# PROPHYLACTIC SURGERY

## Healing and Preventative Medicine

- Does the mitzva to heal (*Shemot 21:19*) or of guarding one's health (*Devarim 4:15*) extend to preventative medicine?
- Can the mortal danger (*sakana*) and short-term bodily damage (*chabala*) of a prophylactic procedure be permitted because of its life-saving potential, even before a disease manifests?

שולחן ערוך קע"ט:ז מי שרודפים אחריו נחש ועקרב מותר לחבר כדי שלא יזיקהו:

**Shulchan Aruch 179:7** Someone who is being chased by a snake or scorpion is permitted to 'whisper charms' [usually prohibited on a Torah level] so that it not harm him.

**Responsa Binyan Tziyon II 169** For it is also permissible, for the sake of saving a life, in this type of case where one is frightened lest it bite him and he will come to be in mortal danger.

**R. Yehoshua Weissinger** extrapolates that, "[a] person who has a pathogenic genetic mutation, i.e.-one that entails a high degree of certainty to lead to a life-threatening disease-is already considered to be at risk, even though he does not yet have symptoms of an active disease."<sup>1</sup>

## Affecting Ability to Reproduce

- *Sirus* (sterilization) is prohibited on a Torah level (*Vayikra 22:24*) to men, and is widely considered to be a rabbinic-level prohibition for women.

שולחן ערוך אבן העזר ה"א והמסרס את הנקבה בין באדם בין בשאר מינים פטור אבל אסור:

**Shulchan Aruch EH 5:11** And regarding one who sterilizes a female, whether a human or another species - he is exempt (i.e. did not violate a Biblical prohibition) but it is forbidden.

**Does *sirus* preclude performing oophorectomy, salpingectomy, or hysterectomy?**

When surgery was higher risk and the evidence for prophylactic procedures was less conclusive than now, **Rav Moshe Feinstein** permitted performing a prophylactic salpingectomy (removal of fallopian tubes) during a planned hysterectomy.

**Responsa Iggerot Moshe CM 2:73** The likelihood of it becoming cancer, even though it is only five percent, should be considered a danger for the woman allowing for permitting this [salpingectomy at the time of hysterectomy], for it is a great concern. And even should we say that one should not perform a surgery for a one in twenty chance, that is because the surgery itself comes with risk.

This ruling helped lead to a halachic consensus today that is supportive of recommended prophylactic surgeries even as stand-alone procedures, even when they entail *sirus*.

**Rabbi Mordechai Willig, Catching Cancer Before it Catches You: Medical and Halachic Implications of BRCA Gene Testing, minute 74, YUTORah.org** “Nonetheless we are in the halachic view that saving lives comes first. And if Rav Moshe’s only reason not to recommend the surgery was a 5% chance was because of the danger involved in the surgery itself, one has to re-evaluate that 25 years and more later, when the risk of such surgery is almost nil [according] to the experts, and defer [to the experts] when it comes to recent medical [information]. . .

**Rabbi Avraham Steinberg, Rabbi Zalman Nechemiah Goldberg and Rabbi Asher Weiss** reportedly encourage prophylactic surgery when medically advisable, because the risk of disease and its threat to life outweigh concern for *sirus*.

## Fertility preservation

Women are exempt from the mitzvah of procreation. **Tosafot** (Gittin 41a) suggest that women are obligated in *shevet* - “settling the world,” defined by having at least one child. Surgery that permanently impairs a woman’s fertility may nevertheless be permitted in order to protect her health. In that case, fertility preservation is encouraged when medically safe, but not obligatory.

**Rav Gavriel Goldman and Rav Menachem Borstein (translated from “Fertility Preservation in Cancer Patients” Emunat Itecha #121, pp 137-46)** Although a woman is not commanded to procreate, she still has the right to consider her continuity as well as a commandment of “*shevet*.” Therefore, she is allowed to take certain risks in order to preserve her fertility...The type of fertility preservation procedure that will be performed on the woman will be determined in consultation with the attending physician, depending on the woman’s condition and the level of risk in delaying disease treatment for the purpose of fertility preservation...

## Reconstruction and Tattooing following Prophylactic Surgery

**Cosmetic surgery is typically permitted** to bolster a woman’s self-image in a way that could affect her relationships (Iggerot Moshe CM 2:66), but **tattooing raises additional questions**.

The Torah prohibits tattooing, *ketovet ka’aka* (Vayikra 19:28). But how is it defined?

רש"י מכות כ"א. ואסור לכתוב שום כתיבה בעולם על בשרו בענין זה שכך גזירת הכתוב:

**Rashi Makkot 21a** It is prohibited to write any writing at all on one’s flesh in this manner [of tattooing], for thus is the decree of Scripture [on a Torah level].

רמב"ם הלכות עבודה זרה וחוקות הגויים יב"א כתובת קעקע האמורה בתורה...היה מנהג העכו"ם...

**Rambam, Laws of Idolatry 12:11** Tattooing stated in the Torah...was an idolatrous practice... Many halachic authorities maintain that the **prohibition is rabbinic when a tattoo is not a symbol or letter, or has a clear purpose unrelated to idolatry**.

**Rabbinic prohibitions may be set aside in some cases**, notably, to relieve serious distress, *tza’ar*, which may be psychological, and to preserve *kevod haberiyot*, human dignity.

שבת נ: מגרר אדם גלדי צואה וגלדי מכה שעל בשרו בשביל צער. אם בשביל ליפות, אסור.  
תוספות שם שמתבייש לילך בין בני אדם שרי דאין לך צער גדול מזה

**Shabbat 50b** A person may scrape off crusts of excrement or scabs of a wound that are on his flesh on account of his sorrow. If for beautification, it is prohibited.

**Tosafot ad loc** If he is embarrassed to walk among people, it is permissible, for there is no sorrow greater than this.

ברכות י"ט: תא שמע: גדול כבוד הבריות שדוחה [את] לא תעשה שבתורה.... כל מילי דרבנן אסמיכניהו על לאו ד"לא תסור", ומשום כבודו שרו רבנן...

**Berachot 19b** Come and learn: Kevod haberiyot is great, for it pushes aside Torah prohibition...We rest all rabbinic matters on the [Torah] prohibition of “Don’t deviate” and on account of one’s honor our sages permitted [rabbinic matters]...

**Rav Yehuda Henkin** noted that nipple tattoos also differ from prohibited tattoos in being restorative, neither adding to what was originally there nor giving that impression.

**For these reasons, nipple tattoos may be permitted.**

<sup>1</sup> Translated from Genetic testing and Designation of a Person with a Genetic Mutation as a “Choleh Lefaneinu”, Techumin 40.