

## If a Doctor Delegates Responsibility, Who is Liable For a Misguided Treatment?

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**Question:** It is common for doctors to diagnose patients and then to have their nurses perform the actual procedure. If a doctor's negligence leads to a misdiagnosis, and the nurse is the one who actually does the procedure that injures the patient, who is responsible?

**Answer:** Rav Zalman Nechemiah Goldberg says that it is clear that the doctor who made the misdiagnosis would bear responsibility in a case like this because he was the decision-maker who indirectly caused the damage. He discusses whether the damage caused by the doctor would be classified as "*garmi*" (an indirect form of damage that one is liable for in *dinei odom*), or "*grama*" (an indirect form of damage that one is only liable for in *dinei shomayim*). In any case, the doctor bears some responsibility, while the nurse, who was merely following orders, is exempt from liability.

**Question:** What if the nurse had enough medical knowledge to know that the doctor's advice was bad, but went ahead with it anyway? Would that make a difference in regards to the halacha?

**Answer:** Yes. Rav Goldberg compares this to a Gemara that says that if a *beis din* accidentally loses count of how many lashes a person received and hits him additional times, the agent of *beis din* who is actually doing the hitting is held liable and has to go into exile if the person dies. The reason for this is because the agent was capable of counting on his own; therefore, he can be held responsible for striking the man more than was warranted. We can learn from here that if a nurse is capable of knowing on his own that the higher doctor is giving bad orders, he would be responsible for the outcome. This also would reduce the doctor's liability somewhat, as his damage can no longer be considered *garmi*, as *garmi* only applies when one's actions will certainly cause damage, but if the nurse knows better than to do the procedure it is uncertain that he will follow the doctor's orders.