

Is a Doctor Who Committed Malpractice Obligated to Pay According to The Legal Standard?

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Question: A doctor was negligent with a patient and is clearly liable for malpractice according to halacha. The patient wants the doctor to pay him the amount he would be deserving of according to the laws of medical malpractice, which is a lot more than he would be deserving of according to halacha. Can he make a claim in beis din for the amount that is due to him legally?

Answer: This question is the subject of a seminal debate between two leading experts on Choshen Mishpat in Erez Yisroel: Rav Mendel Shafran and Rav Zalman Nechemiah Goldberg zt"l.

Rav Shafran was asked about an obstetrician who caused damage to a baby by being negligent during the delivery. He ruled that according to the law of the Torah, even if the doctor is deemed liable, he does not have to pay that much. A negligent doctor only has to pay like a *mazik*, who is obligated to pay the "five forms of damage," which Rav Shafran says does not equal nearly as much as one would be liable to pay according to secular law. However, he says that physicians today are only licensed to work if they accept responsibility for negligence, as defined by secular law. Accordingly, it is as if the doctor openly committed to be held accountable according to the accepted secular law, and, therefore, he could be made to pay to the full extent of this law.

Rav Zalman Nechemiah Goldberg disagrees with this reasoning. He says that *minhag hamakom* can be used to determine how many hours a worker is expected to work, how many breaks he deserves during the day, etc.; however, it cannot be used to create a whole new system of liability and to make a professional pay for things that the Torah says he is exempt from.