

## Is a Surgeon Liable for Malpractice?

Rabbi Yitzchak Grossman

**Question:** A surgeon is operating on a patient and, during surgery, inadvertently caused damage to the patient. Is he liable for this damage?

**Answer:** The basic halachic rule of medical malpractice is that if a doctor is properly trained, licensed and certified, and has communal acceptance to practice, if something goes wrong accidentally during a treatment, he is exempt from any liability in *dinei odom*, but liable in *dinei shomayim*. This means that beis din cannot obligate him to pay any compensation, but he has a moral obligation to pay. Additionally, if he accidentally kills a patient, he has an obligation to go into *golus* (exile).

**Question:** Would the halacha be different if he damaged an organ that he was not supposed to be operating on?

**Answer:** The Shevet Halevi discusses a similar case.

The Tosefta says that a doctor is exempt from liability in *dinei odom* unless he does something that is more than what he should have done. It is not 100% clear what this means, but the Shevet Halevi suggests an example of a dentist who drills the wrong tooth. Since he should never have been working on this tooth at all, he is liable to pay even in *dinei odom*. It would seem that the same logic would apply to a doctor who damages a different organ than the one he was supposed to be working on.