

The Hippocratic Oath in Halakhah*

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Introduction

Hippocrates, often considered the father of Western medicine, lived in ancient Greece shortly after the building of the Second Temple. Despite his numerous contributions to academic and clinical medicine, Hippocrates is likely best known to modern students of medicine through the Hippocratic Oath, a text attributed to Hippocrates and traditionally administered to students shortly before their graduation from medical school.

Before addressing *halakhic* considerations related to this practice, we note that taking this oath, a tradition followed in the vast majority of medical schools in the United States,¹ is in no way required to be either licensed as a physician nor to be board-certified.² Thus, the practical interest in taking this oath is less a question of professional necessity and more a question of tradition, one in which many would like to participate.

*This chapter is dedicated to the memory of R' Aharon Lichtenstein zt"l, with whom I first learned *Mesechet Shevuot*.

¹This is a somewhat new phenomenon. In 1928, less than half of all medical schools in the United States administered any type of oath (E.J. Carey, *Acad. Med.* 3:2, 1928). By the late 1950's almost three quarters of schools did so (D.P. Irish and D.W. McMurry, *J. of Chr. Dis.* 18:3, 1965), and at the turn of the century all schools administered some kind of oath (A.C. Kao and K.P. Parsi, *Acad. Med.* 79:9, 2004).

²This might be contrasted with other professional oaths, including those taken by lawyers, members of the military, senators, cabinet members, and the President of the United States. In the majority of those cases, one may not assume the given position without either swearing or affirming that one will carry out the duties of the position. On occasion, other professions have also required some oath or affirmation to be licensed. In Texas, for example, public accountants must swear in order to be certified as such.

The Oath

The substance of the Hippocratic Oath is largely innocuous. The starting physician pledges to respect his or her teachers and to teach the art of medicine to other worthy students. He or she commits to heal patients, respect their privacy, neither harm nor take advantage of them or their families, nor to assist them in suicides or abortions. Finally, the physician agrees to abstain from performing surgeries, which should be left to trained surgeons. Although wording of the oath varies today from school to school, these themes, derived from the oldest extant copies of the text, are shared by most modern versions.³

No individual part of this oath appears particularly problematic from a *halakhic* point of view. Indeed, many of its themes seem entirely consistent with, if not identical to, traditional Jewish values. However, recitation of the Hippocratic Oath still raises several *halakhic* issues related to *shevuah*, an oath in Jewish law.

Obligations of Shevuah

The Torah gives us the ability to obligate ourselves in or prohibit ourselves from otherwise permissible behavior: *If a man makes a vow to God or makes an oath to prohibit himself, he shall not violate his word; according to whatever came out of his mouth he shall do* (Bamidbar 30:3). Such a vow is known in rabbinic literature as a *shevuat bitui*, literally a vow of expression. Willing violation of a *shevuah* can be punished with lashes; inadvertent violation results in the obligation to bring a sacrifice. The Rambam counts both a positive commandment to fulfill one's commitments and also a prohibition of swearing falsely.⁴

³W.J. Friedlander, *Soc. Sci. & Med.* 16:1, 1982.

⁴*Sefer Hamitzvot* Pos. 94, Neg. 61, *Hilchot Nedarim* 1:4.

False Gods

The original text of the Hippocratic Oath invokes the names of several Greek gods including Apollo, Hygieia, and Panacea. Swearing in the name of pagan gods almost certainly violates the biblical prohibition of *v'shem elohim acheirim lo tazkiru*, swearing in the name of false gods.⁵ The original text of the oath is thus clearly problematic and may not be recited under any circumstances. In contemporary times, however, various modified versions of the text are used and hardly any graduating medical student is asked to invoke the names of ancient pagan gods. We are then left to contend with several more broadly-applicable questions surrounding oaths: are oaths in general permissible and advisable? Is the Hippocratic Oath recognized by *halakhah* as a *shevuah*? What should happen if the *shevuah* leaves one conflicted between his or her commitment to fulfill the *shevuah* and other responsibilities, *halakhic* or otherwise?

Inadvisability of Shevuot

In concluding his discussion of the laws of *shevuot*, the Rambam summarizes the accepted rabbinic attitude towards taking unnecessary oaths: “it is a great good for a person to not swear at all.”⁶ Although in limited circumstances taking an oath is permitted⁷ or even obligatory,⁸ those cases are generally viewed as exceptions.

Many understand this discouraging attitude as stemming from a blanket fear that the oath may be violated, even if inadvertently. The Talmud thus relates a story in which inadvertent violation of a *shevuah* appears to be punished by Heaven with the

⁵Shemot 23:13, Rambam *Hilchot Avodah Zarah* 5:10, Shulchan Aruch *Yoreh De'ah* 147:1. *Sefer HaChinuch* 86 suggests that others interpret this verse differently; see *Minchat Chinuch* ad. loc.

⁶*Hilchot Shevuot* 12:12.

⁷Based on *Nedarim* 8a, the Rambam in *Hilchot Shevuot* 11:3 permits taking a *shevuah* to encourage one's self to fulfill a *mitzvah*; see also Shulchan Aruch *Yoreh Deah* 203:6.

⁸See Rambam in *Sefer HaMitzvot* Pos. 7 and *Hilchot Shevuot* 11:1, who counts as a *mitzvah* swearing truthfully in the name of God when necessary. However, see also Raavad (comments to *Minyan Hamitzvot Hakatzar*) and Ramban (there, and in commentary on *Devarim* 6:13) who disagree.

death of a child.⁹ Further highlighting the severity with which the *halakhah* treats this topic, Rambam counts the violation of a *shevuah* among the most severe of sins, the only non-capital crime described in such terms.¹⁰ Given the ease with which commitments are often made and broken, it seems only wise to distance one's self from *shevuot* – and their punishments – as much as possible.¹¹

Other sources suggest a secondary concern, independent of any fear that a *shevuah* might eventually be violated. In a chapter detailing some *halakhot* of pursuing a profession, the *Tur*¹² writes that one should be very careful of swearing even truthfully, and cites a story from the Midrash in which thousands of cities were destroyed as punishment for an unnecessary truthful *shevuah*.¹³ Even if prudence would dictate distancing ourselves from the mere possibility of swearing falsely, disregard for that caution is unlikely to itself be grounds for such severe punishment. Instead, it seems, swearing in God's name, when doing so is not absolutely necessary, is itself dishonorable and offensive. In a sense, it is a particularly egregious example of taking God's name in vain.¹⁴

Status as Shevuah

Of course, the general inadvisability of taking a *shevuah* is not particularly relevant if the case before us is not first established as a bona fide *shevuah*. Indeed, a reader may wonder whether the Hippocratic Oath is recognized by *halakhah* as a *shevuah*, given that this pronouncement is often made in English,

⁹*Gittin* 35a. See *Kesef Mishna* on *Hilchot Shevuot* 12:12, who cites this episode as the source for the Rambam; see also *Mishne L'melech* who disagrees.

¹⁰*Hilchot Shevuot* 12:1-2.

¹¹Authorities debate the propriety of taking a *shevuah* in cases of impending financial loss and similar situations; this, however, is not our concern. See extensive discussion in Ch. 1 of R' Yitzchak Eliyahu Shatzman's *Kol Nidrei*.

¹²*Orach Chaim* 156:1.

¹³*Midrash Rabbah*, *Matot* 22:1. See also *Vayikra Rabbah* 6:3 that tells a variation on the story told in *Gittin*, in which children die as a result of a truthful *shevuah*.

¹⁴See *Mishne L'melech* on *Hilchot Shevuot* 12:12, mentioned above, who disagrees with the *Kesef Mishna*'s explanation of the Rambam.

without the wording of an oath, and even without the name of God. Moreover, in some cases the oath is not made directly, and instead graduating students respond ‘amen’ after the oath is recited by a person leading the commencement ceremony.

In accordance with an opinion of the Rashba, the Rema states that there is no difference between a *shevuah* stated in Hebrew and one stated in any another language.¹⁵ Even use of the word ‘*shevuah*’ is unnecessary, and a synonym is sufficient.¹⁶ Moreover, while early commentators debate whether a *shevuah* made without explicit reference to God is punishable when violated, all agree that such a *shevuah* still entails all prohibitions associated with a *shevuah*.¹⁷ Finally, the Talmud makes clear that a *shevuah* need not be recited directly, but can also be made by responding affirmatively to the administering of a *shevuah* by another person.¹⁸ Early authorities elaborate that this is true even if the person administering the oath is not Jewish.¹⁹ Moreover, this is true even if the person responding did not use the exact word ‘amen’, but instead used any synonymous phrase.¹⁹

The above *halakhot* – largely uncontested by earlier or later authorities – indicate that, under normal circumstances, recitation of the Hippocratic Oath would entail the full *halakhic* obligations of a *shevuah*. Indeed, in discussions related to the Hippocratic Oath, several contemporary authorities have taken for granted its status as a proper *shevuah*.²⁰

Although we have previously noted the inadvisability of taking oaths generally, the *halakhot* of *shevuah* are worth considering, as they may relate to cases in which a *shevuah* has already been made, perhaps inadvertently, or without full understanding of its *halakhic* implications.

¹⁵ *Tshuvot haRashba* 1:842, Rema *Yoreh Deah* 237:1.

¹⁶ Rambam *Hilchot Shevuot* 2:5-6, Shulchan Aruch *Yoreh Deah* 237:4. From these sources it appears that use of the phrase ‘I promise’ would also constitute a *shevuah* and should, consequently, also be avoided.

¹⁷ Rambam *Hilchot Shevuot* 2:2-4 and Raavad there, Shulchan Aruch *Yoreh Deah* 237:1.

¹⁸ *Shevuot* 29b.

¹⁹ Rambam *Hilchot Shevuot* 2:1, Shulchan Aruch *Yoreh Deah* 237:2.

²⁰ *Torat Harefuah* of R’ Shlomo Goren, *Tzitz Eliezer* of R’ Eliezer Waldenberg; both sources are discussed later in this chapter.

Intention

For a *shevuah* to be binding, it must involve both purposeful intent and an explicit expression of that intent.²¹ The typical graduating student, between listening to speeches and other parts of the commencement program, might by rote read the Hippocratic Oath with his or her classmates, without sufficient intention to make this a binding oath. This may leave room for leniency in some cases in which the oath was already taken.

Moreover, even when there is no question that a *shevuah* was in fact made, the particular intention of the person making it must still be considered.²² When one commits to not harm patients, for example, he or she does not mean that they will not prescribe bitter-tasting medicines. Although in some sense this can be construed as ‘harming a patient’, this was clearly not the intention of one who took this oath. Early authorities, based on statements in the Talmud, have codified a general principle that we follow the vernacular and intention of a speaker when interpreting *shevuot*.²³ This principle must be taken into consideration when establishing what behaviors were and were not included in a particular *shevuah*.

Shevuot Concerning Mitzvot

The Talmud teaches that an oath made to fulfill or violate a *mitzvah* is not binding.²⁴ If one swore, for example, to not eat *matzah* on the first night of *Pesach*,²⁵ or else to withhold testimony in court,²⁶ such a *shevuah* would not be binding. However, the Tal-

²¹ *Shevuot* 26b, Rambam *Hilchot Shevuot* 2:10-15, Shulchan Aruch *Yoreh Deah* 210:1, 239:1. Later authorities debate whether a written commitment can also effect a *shevuah*.

²² Rambam *Hilchot Nedarim* 8:8, Shulchan Aruch *Yoreh Deah* 218:1, 239:1.

²³ Rambam *Hilchot Nedarim* 9:1, 9:13, Shulchan Aruch *Yoreh Deah* 217, 239:1.

²⁴ *Shevuot* 27a. See also Rambam *Hilchot Shevuot* 1:6, 5:14-16 and Shulchan Aruch *Yoreh De'ah* 236:2,5 and 239:4-8.

²⁵ Yerushalmi *Shevuot* 3:4, Rambam *Hilchot Shevuot* 1:6, 5:18, Shulchan Aruch *Orach Chaim* 485:1, *Yoreh Deah* 236:5.

²⁶ *Shevuot* 29a, Rambam *Hilchot Shevuot* 5:15. Under certain conditions, providing testimony in court is a biblical obligation. See *Vayikra* 5:1, *Bava Kama* 55b, Rambam *Minyan Hamitzvot Hakatzar* Pos. 178, *Hilchot Edut* 1:1, and Shulchan Aruch *Choshen Mishpat* 28:1.

mud also cites an important exception to this principle: if one swore in a general manner, grouping together the performance of a *mitzvah* with other, elective behavior, then such a *shevuah* would be binding even on the *mitzvah*.²⁷ For example, if one swore to not eat *matzah* all year long, then one would be prohibited from eating *matzah* all year long, even on *Pesach* itself; eating *matzah* at the *seder* would then be punishable as would violation of any other *shevuah*.²⁵

This *halakhah* is relevant in our case, as certain obligations imposed by the Hippocratic Oath may eventually come into conflict with other obligations. For example, a physician may be asked to testify in court regarding the condition of patient to help ensure the safety of that patient or others. While providing such testimony may fulfill a biblical obligation of providing testimony,²⁶ it does so at the expense of violating patient confidentiality. For a physician who has taken the Hippocratic Oath, disclosing confidential information would constitute a violation of a *shevuah*. The reader can certainly imagine other situations of potential conflict.

Several contemporary authorities have considered practical questions that have arisen in this context. Rav Shlomo Goren addressed a question from a neurologist who had diagnosed a patient with epilepsy and was concerned that the patient may continue to drive, despite considerable dangers.²⁸ The neurologist asked R' Goren whether he was permitted, or perhaps even obligated, to divulge the information he knew to appropriate authorities. R' Goren advised the questioner to counsel his patient directly about the legal and *halakhic* prohibitions involved in driving, and, barring any evidence indicating the contrary, the physician could presume that the patient will follow his advice. In such a situation the physician would be forbidden from violating both the civil law regulating confidential medical information as well as the Hippocratic Oath he had taken. Only in cases in which the patient adamantly refuses to cease driving, and in which the physician believes that continued driving poses risk to the patient or others, did

R' Goren recommend approaching a *beit din* to help annul his vow.

Rav Eliezer Waldenberg discussed a similar case in which a physician had taken the Hippocratic Oath and was subsequently asked to testify in court regarding a patient.²⁹ Because the *shevuah* was taken in a general manner, we would expect that the oath also prohibits the physician from providing testimony in court, despite it being a *mitzvah*. However, R' Waldenberg suggested that a physician, and certainly a religious one, does not have in mind when taking this oath to withhold testimony where doing so would violate a *mitzvah*. For this reason he ruled that the physician may testify in court.³⁰

This conclusion, a tremendous leniency, appears at odds with another accepted *halakhah*. In particular, the Talmud itself provides an example, discussed above, of a person who swears not to eat *matzah* throughout the year, and concludes that he is forbidden from eating on *Pesach* as well.²⁵ Neither the Talmud nor later authorities suggest that the *shevuah* be binding only during the year, but that an exception be made for *Pesach*, as a religious person would not have had in mind to prohibit himself from fulfilling a *mitzvah*. Instead, it appears that the simple understanding is that people do not always think carefully about potential repercussions of their verbal commitments. Given that many beginning physicians are likely not thinking about complex eventualities and *halakhik* repercussions of taking the Hippocratic Oath, it seems difficult to justify R' Waldenberg's retroactive understanding of intention, at least in our case.

Two points might be noted in analyzing the discussions of R' Goren and R' Waldenberg. First, both tacitly assumed that the Hippocratic Oath is recognized by *halakhah* as a bona fide *shevuah*. Second, neither offered a general advisory against recitation of the Hippocratic Oath, and instead considered how to deal with its potential *halakhic* ramifications. It is possible that both overestimated the importance of taking this oath, and had either known that there is in fact no legal nor professional responsibility to do

²⁷ *Shevuot* 21b, 22b, 23b, 24a, 24b; see also Rambam *Hilchot Shevuot* 5:18 and Rema *Yoreh De'ah* 239:4, 236:5.

²⁸ *Torat Harefuah*, in a chapter entitled "Preserving patient confidentiality of a patient diagnosed with epilepsy".

²⁹ *Tzitz Eliezer* 13:81.

³⁰ See also *Tzitz Eliezer* 13:104, 15:13, 16:4, in which R' Waldenberg repeats this suggestion.

so, they would have advised against its recitation, at least in its classical form as a *shevuah*.

Annulment

The *Torah* provides a number of mechanisms through which a *shevuah* can be invalidated or annulled. A person who regrets having made a *shevuah* and for whom the *shevuah* creates suffering can approach a group of three people, at least one of whom is familiar with the *halakhot* of *shevuot*. The petitioner explains the *shevuah* that has been made and explains that had he or she fully understood the consequences of the *shevuah*, he or she would never have taken the *shevuah* in the first place. The three people then confirm with the person that this is indeed the case, after which they can verbally annul the oath.³¹

Like the taking of *shevuot*, their annulment has also been traditionally approached with trepidation. The Rambam writes: “we do not annul oaths except for a matter of *mitzvah* or for extenuating circumstances.”³² For this reason, and given the intricacy of the laws of the annulment of *shevuot*, even a brief summary of all pertinent laws is not possible in this space. A person finding one’s self in such a situation is encouraged to speak with a competent *halakhic* advisor familiar with these *halakhot*. The importance of fulfilling one’s duties as a physician in the most desirable fashion appears to constitute “extenuating circumstances”, if not an outright *mitzvah*, which may be sufficient grounds for annulment.³³

Conclusions

Given the general *halakhic* reluctance to engage in *shevuot*, and given the lack of professional need to take the Hippocratic Oath, it appears that the responsible choice for an observant student would be

to abstain from taking this *shevuah*. Those desiring to participate in this part of the commencement ceremony might consider altering the text they recite in such a way that makes clear that they are not making a *shevuah*.

Nonetheless, it appears that recitation of the Hippocratic Oath, certainly when done so with full awareness of what is being said, creates a binding *shevuah* in the full *halakhic* sense. Despite tension created with other *mitzvot*, each part of the *shevuah* is binding because the statements are made in a general manner, and are not made to specifically prevent one from performing a *mitzvah*. Therefore, one who has taken the Hippocratic Oath must exercise extreme caution in situations in which the plain meaning of what one stated entails particular behavior. This is true even when *halakhic* obligations resulting from the *shevuah* come into dissonance with particular *mitzvot*. Great care should be taken in particular in the area of patient privacy.

Regardless of whether or not one makes a verbal declaration such as the Hippocratic Oath, many of the obligations described therein should be intimately felt by the religious physician as he or she begins the sacred mission of healing others. In such work, one plays a small role alongside the Almighty, as it were, in fulfilling *ani Hashem rofe’ekha*, “I am God your healer”. This is a mission to which, in some sense, the graduating student has since long ago been “perpetually sworn from Mount Sinai.”³⁴

³¹ *Bechorot* 36b, *Hilchot Shevuot* 6:1-5, Shulchan Aruch *Yoreh De’ah* 228.

³² *Hilchot Shevuot* 12:12; also Rema *Yoreh Deah* 203:3.

³³ A reader may wonder whether the yearly recitation of the *Kol Nidrei* prayer on *Yom Kippur* might provide a source for leniency regarding the *shevuah* in question. The Rema (*Yoreh Deah* 211:1) notes that we do not rely on *Kol Nidrei* to permit vows without subsequent consultation with a *halakhic* advisor, except for in dire need.

³⁴ *Shevuot* 27a and *Nedarim* 8a.