Paper Outline for “Health risk assessment: Examining the similarities between the reasoning exercises of medical experts and Islamic legists.”

**Overarching Working Group Question 1:** Can scientific notions of risk (e.g. medical, statistical) and religious concepts of necessity be combined to generate a scheme of human health needs?

**Abstract for PMR Conference:** Panel Presentation format- 2 panelists- Sh. Omar and Dr. Aasim; Respondent-Sh. Jihad moderator- Ahsan

 Religious values influence the health behaviors of Muslim patients and the clinical practices of Muslim healthcare practitioners in a myriad of ways including the way they conceive of disease and cure to the particular therapeutics they seek and provide. Accordingly, when Muslims deliberate over medicine their concerns are not confined to the impact of medicine upon physical health, but rather their concerns extend to adherence to religious norms and by extension the moral dimensions and potential afterlife ramifications of the use of medicine. In this presentation we aim to shed light upon the moral evaluation of medicine from an Islamic perspective and compare these reasoning exercises to the conventional medical reasoning. Through a panel presentation involving a Muslim clinician and an Islamic jurist we will work though considerations of risk within the clinical realm and Islamic law using a case that involves infectious risk related to the performance of the Hajj. We will define key terms within the reasoning exercises of the medical expert and the legist and illustrate how each expert evaluates evidence within their discipline. Specifically we will outline how each disciplinary expert would define benefit and harm and thereby risk, discuss levels of evidence and considerations of certainty in the respective expert’s deliberations and discuss how the legist employs medical understandings in their reasoning. Furthermore we will comment on the broader issues at the heart of religion and science dialogue such as occasionalism versus causation, and trusting in the Divine versus using worldly means to effect healing, in so far as they relate to the reasoning exercises of the medical expert and the Islamic legist. By clarifying the often unspoken and little understood religious dimensions of biomedicine we hope that medical practitioners can better engage their patients to provide more holistic care that not only attends to the psychosocial and physical aspects of illness and treatment but acknowledges and responds to the religious considerations at play as well.

**Paper Outline:**

1. **Introduction – Omar Qureshi**

 The practice of the medicine in Western societies presents certain challenges to a Muslim when seeking out medical treatment. To a large extent, this is due to the separation of the practice of medicine from religious understandings of the body, illness, medical treatment and well-being. This separation has been identified by scholars as being rooted in Enlightenment understandings of science and religion which has led to what we know today as the ‘religion and science conflict’. This situation has left the practicing physician unable to offer treatment options that address the patient needs in a holistic manner. The Muslim patient is left to determine what option to take and attempting to decipher which course of action is most pleasing to God largely without the support of clinicians or religious leaders.

 To solve this situation, we will be examining the modes of reasoning employed by medical experts and Muslim jurists regarding medical treatment. Our examination will focus on describing the sources of knowledge, modes of reasoning and applying that knowledge to the question at hand, and will aim to draw parallels between these reasoning exercises. To this end, our paper focuses on how Muslim jurists treated the legal obligation of a Muslim to seek out medical treatment in general and cancelling the yearly pilgrimage (ḥajj) to Mecca. Key concepts that involve an interplay between medical knowledge and ethico-legal constructs will be discussed, including the concepts of harm (ḍarar) and benefit (nafʿ), acts that promotes one’s interest (maṣlaḥa), and acts that serve as a detriment (mafsada). By comparing and contrasting reasoning exercises of medical experts and Muslim jurists, our intention is to lay a framework that allows the physician, other medical experts, and the jurist to collaborate to design medical solutions for the Muslim patient that incorporates all dimensions of the patient. Thereby, this will enhance our knowledge of different ways medicine is practiced that will lead to further meaningful collaboration of physicians and Muslim jurists to provide holistic care that not only attends to the psychosocial and physical aspects of illness and treatment but acknowledges and responds to the religious considerations at play as well.

2. **Knowledge and certainty (Omar Qureshi)**

 In the Islamic intellectual tradition one finds a number of discussions on the nature of knowledge, the means one arrives at knowledge, the types of knowledge, and the qualities of knowledge. Different sciences have set up different conditions for what is acceptable as evidence that can be considered in the science. In this section, we will outline at the definition of knowledge its means, and degrees of knowledge as understood by Muslim jurists and legal theorists.

 Knowledge (*al-ʿilm*), in the Islamic tradition is propositional knowledge and has been defined as, “a firmly conviction (*al-iʿtiqād al-jāzim*) that corresponds to the thing in itself (*al-muṭābiq lil-wāqiʿ*).”[[1]](#footnote-1) Knowledge belongs to genus of convictions and based on this definition, there are two aspects to knowledge: conviction relating to proposition that has the possibility of being true or false, and the correspondence of the proposition to thing in itself. While knowledge has been defined by others as a perception of the thing in itself with no reference to certitude, according to al-Jurjānī’s definition, the term *al-ʿilm* can only be applied to those convictions that are held firmly and that correspond to reality. The term *al-ẓann* refers to knowledge that is probable or presumptive and has been defined as “a preponderant conviction (*al-iʿtiqād al-rājiḥ*)with the possibility of its contrary (*al-naqīḍ*) being true.”[[2]](#footnote-2) *Al-ẓann* refers to a belief that is not held as firmly as in the case of knowledge which creates the possibility of the conviction not being true, i.e. not corresponding to the thing in itself. If we were to quantify this possibility, it would range anyway from 1% to 49%, or a highly probable (*ghalabat al-ẓann*)possibility of not being correct to merely probable possibility of not being correct.

 Continuing on the spectrum, uncertainty (*al-shakk*) refers to “the indecision between two contradictory propositions without determining one proposition over the other on the part of the person.”[[3]](#footnote-3) Uncertainty here does not refer to the truth value of the propositions, rather uncertainty is refers to the person’s inability to decide between two contradictory propositions. An improbable conviction (*al-ẓann al-marjūḥ*) a belief that is most likely not true and false (*baṭil*) is a firm belief in a proposition that does not have the possibility of being true.

 What types of propositions can we haven certainty over? Muslim theologians and logicians discuss six types of propositions which a person can arrive at certainty regarding them. The first are self-evident logical truths or first principles (*al-ʾawwalīyyat*). These are *a priori* rational truths such as a person’s knowledge of their own existence, and that the truth of one proposition implies the falsehood of its contrary. Sense perception (*al-ḥiss*) does not play a role in this type of knowledge. The second type are propositions that are based in observations of one’s inward states (*al-mushāhadāt al-bāṭinah*) such as hunger, fear, and thirst.

 Empirical propositions, the third type, are known through sensory perception (*al-maḥsūsāt*) through the external senses. This includes propositions such as ‘the snow is white’ and ‘the sun gives light.’ Other empirical propositions, the fourth type, are those known through experience (*al-tajribāt*) or the unchanging course of events in the natural world (*ittirād al-ʿādāt*). Examples are propositions such as ‘fire burns’, ‘bread satiates’, ‘wine is an intoxicant’, and ‘scammony is a laxative’. al-Ghaẓālī expands on this section significantly with the aim to differentiate between those propositions that are known through experience and those that are known through sensory perception. He states,

 “Knowledge obtained through experience is known with certainty (*yaqīnīyyah*) to the one who experiences them and people differ regarding this knowledge based on their difference in experience. For example, the physician’s knowledge that scammony is a laxative is like your knowledge that water quenches thirst, likewise is the proposition that magnets attract iron to the one who knows this. These propositions are different than propositions known through sensory perception. For what the senses perceive is *this stone falling to the earth*, but the proposition *all stones fall to the earth* is a general proposition, not a particular proposition. Sense perception only generates specific propositions. Similarly, if one came upon a liquid and drank it and then became intoxicated, one could not judge that this type of liquid intoxicates because sensory perception only perceives one specific event of drinking and intoxication. Making a judgment regarding the type of liquid is made by the intellect by means of sensory perception or by perceiving the phenomenon time after time, for knowledge is not obtained from a single occurrence.

 One who experiences pain in a particular part [of the body] and consequently poured a [particular] liquid over it and the pain [then] went away, one does not obtain knowledge that this liquid is the cause of the pain going away since it could have went away coincidently. It is like one who recited Surah al-Ikhlas and the pain went away. For it may occur to one that the pain went away by coincidence. If this occurred multiple times and under different circumstances, certainty and knowledge that it is the cause will then be implanted in the soul just as [certainty] is obtained that fire removes coldness and that bread removes the pains of hunger.”

 *Al-mujarrabāt* are those propositions that are known through experience of the natural world. Similar to other propositions, *al-mujarrabāt* are subject to being true or false, and a person will have uncertainty, presumption, or certainty with regard to the proposition. Each of these has legal implications as to how a Muslim should act regarding seeking medical treatment. In al-Ghaẓālī’s presentation, a person can be an expert and a layperson and certainty regarding *al-mujarrabāt* can be arrived at by both. A physician will have certainty regarding the proposition that scammony is a laxative, or any other proposition regarding the effect of a particular substance. The certainty in the proposition is arrived at after the physician observes on multiple occasions a particular substance and its effect. A single observation of water quenching thirst only justifies a person to make a judgment regarding that particular instance of water. A person cannot, at this point, make this proposition into a universal one. Only consequent to multiple observations of the same phenomenon under different conditions can this proposition now raise to the level of being universal in nature. This is the difference between an expert and a layperson, where a layperson has been exposed to limited observations and limited analysis of the observation.

 The proposition ‘*this stone fell to the earth*’ changing to ‘*all stones fall to the earth*’ involve the intellect going through a subtle hidden syllogism (*qiyās khafī)* after multiple observations of stones falling to the earth by the senses. The syllogism is, according to al-Ghaẓālī, “Were this not the cause that brings out the effect, it would not be observed in majority of cases and were it coincidental, it would not be observed [in some cases].” So in addition to observation, there is this intellectual act in the form of a subtle syllogism that engenders certainty of the proposition in a person.

 The remaining propositions that certainty can be acquired are mass-transmitted reports (*al-mutawātirāt*) such as the existence of Chicago and Abraham Lincoln. The sixth are those propositions that are generated from intuition (*al-ḥadsīyāt*). These are propositions that are about natural phenomenon but differ from *al-mujarrabāt* in that *al-mujarrabāt* are directly experienced by a person whereas *al-ḥadsīyāt* association which forms the proposition is intuited such as the moon deriving its light from sun.

3. **Medical notions of risk along with levels of evidence. (Dr. Ahsan – editorial support from Dr. Aasim)**

This section will flesh out the concepts and principles a physician use when developing policy or advising patients on what treatment to adopt for an illness including the sources of evidence (research study design), calculating probabilities of risk/harm (along with a definition) and the differences between a patient-level decision and population-level recommendation. The section will end with a recommendation (and evidentiary support) for each of the cases described.

4. **The Higher Objectives (maqāṣid) of the Sacred Law (sharīʿah) Harm (ḍarar)/Benefit (nafʿ) and Maṣlaḥa/Mafsada (Sh. Jihad)**

**J. Hashim Brown**

A. Preliminaries: The relationship of higher objectives (*maqasid al-shariah*) to the principle of benefit (*maslaha*).

\*\* Brief gloss of section logic

B. Benefit/good (*maslaha*)

 1. Definition of ‘public benefit’ considered.

 2. The defined and undefined benefit.

 3. Criterion of validity.

 4. Schedules of priority and precedent.

 5. Instruments of identification.

 6. Maxims applicable to benefit.

C. Risk, harm (*darar*), degradation (*mafsadah*).

D. Juristic criteria for ‘forfeiture of benefit’ (*tafwit al-manfa’ah*)

\*\* note on the difference between difficulty (*haraj*) and inconvenience; and the meaning of ‘legal accountability’ (*al-taklif*).

E. The role and work of the apposite descriptor (*al-wasf al-munasib*) in the dynamics of ‘public benefit’ (*maslaha*).

\*\* Separation between wisdom and rationale as a policy control.

F. The instrumental function of the model of ‘higher objectives’ (*maqasid*) as it relates to ‘public benefit’ and ‘risk’.

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5. ‘Juristic maxims (*qawa’id kulliyyah*) connected to ‘public good’ in general.

6. ‘Juristic maxims’ concerned specifically with harm/ risk.

G. Concepts with applicability to *public benefit* and *risk*.

 1. *Istihsan*

 2. *Istislah*

 3. *Irsal*

2.a The idea of a formal ‘benefit’ (*maslaha*) has a particular meaning within the context of Islamic legal reasoning. The relevance of the concept of ‘benefit’ to medical procedures and considerations of health and public policy may be seen in four ways. The first is to facilitate the assurance of adherence to religious commitments for clients and patients who subscribe to the confessional frameworks of Muslim theology and jurisprudence. Second, it constitutes a method for rational decision-making processes within the context of a particular socio-political culture. One that at particular points in human history has found itself responsible for the management of a body-politic; including its public policy and social services. Third, among the explicit purposes of this legal instrument are that it enables the adherents of a faith programme begun fourteen centuries ago to accommodate new developments in human experience while still working from within the parameters of the same faith culture.[[4]](#footnote-4) Fourth, there remains a potential heuristic value, in the study of these conceptual instruments, for research into comparative ethical theory.

The formal idea of a ‘good’ or a ‘benefit’ (*maslaha*) in legal theory (*usul al-fiqh*) will have a linguistic meaning as well as a more pertinent disciplinary meaning, or discipline-specific meaning. The first is just that, ‘good’, meaning *khayr*; or otherwise, ‘the opposite of ‘degradation’ (*al-mafsadah*). The etymological root of *maslaha* intimates either ‘moral rectitude’ or the soundness and integrity of a system or entity. A closely related, and often used term is ‘benefit’, *manfa’ah* or *nafa’*.

In a movement toward a more disciplinary meaning, al-Izz b. Abd al-Salam, defines ‘benefit’ as “pleasure or a means (*sabab*) to it, or happiness or a means to it.” He will define its opposite, ‘degradation’ or ‘corruption’ (*mafsadah*), as “pain or a means to it, or anguish (*ghamm*) or a means to it.”[[5]](#footnote-5) The inclusion here of the idea of ‘anguish’ or ‘anxiety’ (*ghamm*) implies a legislative, even theological, recognition of mental pain. This recognition may indeed extend also to ‘clinical depression’ (*iktiyab* in contemporary usage). This reading—of a thirteenth century text by one of the foremost scholars in the field—will also influence the interpretation of the idea of ‘happiness’ employed in the definition of ‘benefit’ here; i.e. it would also intimate a consideration of psychological well-being on the part of ‘sacred law’ (*al-shariah*).

An analysis of the ways that ‘benefit’ is used within Islamic legal reasoning reveals three referents for the term. In the first, a ‘benefit’ is the *means* (*sabab*) that facilitates the obtainment of a higher objective of sacred law (*maqsid al-shar’*). In the second, the ‘benefit’ is the *objective* itself. In the third, it is the category of pleasures and joys. The first rendering is adopted by al-Ghazali, the second by Sayf al-Deen al-Amidi, and the third by al-Izz b. Abd al-Salam.[[6]](#footnote-6)

In a discipline-specific deployment of the term, Muhammad al-Tahir b. Ashur, defines a ‘benefit’ as, “a quality (*wasf*) of an act by which ‘rectification’ (*al-salah*) is secured, always or most often, for both the public as a whole or for individuals.”[[7]](#footnote-7)

In this operational definition the concern is focused squarely upon human acts. The *maslaha* is the descriptor (or qualifier or attribute) of an action. The action, when qualified with this particular descriptor, facilitates or leads to one of the higher objectives of sacred law. It would appear that Ibn Ashur is closely following the format of the *Mustasfa* (of al-Ghazali); where the ‘act’ coupled with its particular ‘qualifier’ is the ‘benefit’ (*maslaha*) so long as it leads to (or is a means to) securing an ‘objective’ advocated by sacred law. The ‘descriptor’ or ‘qualifier’ (*wasf*) of the act/action would here, be the object to which the precepts (*dawabit*) of ‘benefit’ would be applied. These ‘precepts’ being the terms or conditions for the validity of a ‘recognised’ benefit (*maslaha mu’tabarah*).

In the latter bit of the definition, the terms ‘always’ and ‘most often’ refer to *frequency* or *probability*. ‘Always’ intimates a *pure* (unadulterated) good, or one that obtains absolutely (or automatically without excessive conditions, qualifications, or ‘hedging’). ‘Most often’ intimates a merely *preponderant* (*rajih*) benefit that obtains on most occasions—when invoked—but not always. The terms ‘for the public as a whole’ (*li al-jumhur*) and ‘for individuals’ intimates *scope*. Each of these considerations of *frequency* and *scope* effect prioritization; and we will have recourse to return to them in what is to come.

The second definition, that of al-Amidi, where the ‘benefit’ is the higher objective (*maqsid*) itself, is generally offered as the majority position among legal theorists.[[8]](#footnote-8) Here, the precepts of ‘recognition’ (*i’tibar*) would apply to a ‘textually undefined’ benefit (*mursala*), or affect the prioritisation of ‘textually defined’ (pre-established) benefits.

*The defined and undefined benefit*

*Criteria of validity*

*Schedules of priority and precedent*

(a) frequency

(b) scope

(c) priority

*Instruments of identification*

*Maxims applicable to benefit*

Risk, harm (*darar*), degradation (*mafsadah*)

The instrumental function of the model of ‘higher objectives’ (*maqasid*) as it relates to ‘public benefit’ and ‘risk’

1. *enumerating the higher purposes*

\*\* Are the higher purposes fixed (*tawqifi*)

2. *Schedule One*: *Order* (*Macro-priority*)

3. *Schedule Two*: *Intensity/gravity* (*Micro-priority*)

4. *Calibrations and approximations*

(a) Affirmative and negative ‘goods’

(b) Compliments (*mukammilat*)

(c) Means (*wasa’il*)

5. **Traditional positions of the four Sunni schools of law on seeking medical treatment and preventing people from performing the Hajj. (Dr. Volkan and Omar Qureshi)**

 The position of the Ḥanafī school as regards whether someone who is sick has to seek medical treatment, as expressed in authoritative compendiums (*mutūn*) such as *al-Mukhtār* of al-Mawṣilī and *Multaqā al-abḥur* of Ibrāhīm al-Ḥalabī, is that seeking medical treatment is not obligatory even if this results in death. Both texts state that whoever fasts and does not eat until he dies commits a sin, whereas one who refuses medical treatment until he dies does not commit a sin. *Taˁlil* works (works that provide transmitted evidence and reasoning for legal rulings) such as Mawṣilī’s *al-Ikhtiyār*, his own commentary on *al-Mukhtār*, and Dāmād Afandī’s *Majmaˁ al-anhur*, a commentary on *Multaqā al-abḥur,* give the reasoning as follows: “because there is no certainty that this treatment will cure him and it is possible that he will become well without treatment.”[[9]](#footnote-9) Another genre of legal literature, Fatwa works, also corroborate this position. *al-Fatāwā al-hindiyyah* citing *Fatāwā Qādīkhān* states that if a doctor tells the patient that he needs a certain treatment, and the patient refuses the treatment until he dies, he does not commit a sin.[[10]](#footnote-10)

 There is a work which presents a restriction (*taqyīd*) for these absolute (*muṭlaq*) statements, namely Badr al-Din al-Simāwī’s (d. 823/1420) *Jāmiˁ al-fuṣūlayn*, an influential reference work for Hanafī judges and muftis. He states that the removal of harm is either certain (*maqtūˁun bihi*) or probable (*maẓnūn*) or supposed (*mawhūm*). Eating and drinking to relieve hunger and thirst are examples of the first category and their refusal until death is forbidden, while medical treatment is considered from the second category and refusal is not forbidden, and can even be more virtuous in some states for some people. However, the author also states that if one knows by personal experience that a certain treatment will cure his sickness, then for this person the treatment becomes removal of harm of the first category.[[11]](#footnote-11)

 In sum, Hanafī jurists stipulate certainty in any form of removal harm for its refusal to be a sin. Since medical treatments provide probability of the removal of harm rather than certainty, one is not obligated to seek medical treatment. The certainty that is taken into consideration is not that of the physician, but rather that of the patient. Within this context, *Jāmiˁ al-fuṣūlayn* indicates that if the patient has certainty from prior experience that a treatment will remove harm to his life, then he is obligated to take the treatment.

 Shafiʿī jurists typically discussed the legal obligation for a Muslim to seek medical treatment in the chapter on funeral prayers in their legal writings. The foremost authorities for legal opinion in the Shafiʿī school of law are Ibn Ḥajar al-Haythamī (d. 974/1566-67) and Muḥammad ibn Aḥmad al-Ramlī (d. 1004/1596) whose legal opinions are found in their commentaries on *Minhāj al-Ṭālibīn* of al-Nawawī (d. 676/1277). al-Haythamī comments on al-Nawawī’s text stating,

 “*And seeking medical treatment is recommended* based on the rigorously

 authenticated report, “Seek medical treatment. For, except for senility (*haram*), God has

 not created an illness except that He also created its cure” and in another rigorously

 authenticated transmission it states, “God has not sent an illness except that He also

 sent its cure.” If one avoided medical treatment trusting [in God], then it is a virtuous act (*fa huwa faḍīlah*). The author stated this. al-Adhraʿī considered other than such a person to be superior explaining that if a person’s trust is strong then it is better for him

 to not [seek medical treatment] but if [a person’s trust] is not [strong], then [seeking treatment] is better. He raised an objection to this [position] that the Prophet (God bless him and grant him peace) is the foremost of all who trust in God but he [still] sought out medical treatment. It will be said [in response] that this was done by him to show that legal nature of [seeking treatment]. I have come across certain jurists answering with the

 same response. Qāḍī ʿĪyāḍ has transmitted that there is consensus (*ijmāʿ*) that seeking medical treatment is not obligatory. This is [claim] is opposed by some scholars of our school holding that it is obligatory [to seek medical treatment] in the case of a person who had a wound which they feared would lead to death (*yukhāfu minhu al-talaf*). [The case of medical treatment being recommended] differs from it being obligatory such as in the case of swallowing wine when choking or to apply a dressing to the phlebotomy site because of the certainty of its benefit (*li tayaqqun nafʿihi*).”[[12]](#footnote-12)

In this passage, the first issue al-Haythamī and al-Ramlī in *Nihāyat al-muḥtāj*,engage in is whether a Muslim when in a state of illness should adopt the course of *tawakkul*, the virtue of consigning one’s affairs to God, or seek out medical treatment. Some jurists held *tawakkul* to be preferred over seeking treatment, but this then raised the issue of how are we to understand the fact that the Prophet sought out treatment when he was ill. Did his act of seeking treatment entail a lack of trust in God on his part? Both jurists answer this issue stating that the Prophet sought out medical treatment merely to “clarify its permissibility (*bayānan lil jawāz*)”[[13]](#footnote-13) and that trusting in God is the preferable course to take. This interpretation of the Prophet’s acts was not satisfactory to later Shafiʿī jurists, such as al-Sayyid ‘Umar al-Baṣrī (d. 1037/1627) who commented on this interpretation saying, “What is evident is that seeking medical treatment is superior because it from his teachings (*sunnah*), in word and deed. The claim that it was done to demonstrate its legality is a purely forced interpretation with no evidence to support it.”[[14]](#footnote-14) In the Shafiʿī school, the default ruling on seeking medical treatment is that it is a recommended act and preferred to trusting one’s affairs to God based on Prophet seeking medical treatment. Ibn Qāsim al-ʿAbbādī (d. 994/1537) said that al-Haythamī’s classifying of *tawakkul* as a virtuous act (*fa huwa faḍīlah*) “signifies that seeking medical treatment is superior.”[[15]](#footnote-15) It is also implied that seeking medical treatment does not indicate a lack of trust in God on a person’s part. Rather, seeking treatment is understood as being fully in line with a person’s reliance on God because it is God Himself who, in addition to created the illness, has also created its cure.

 In addition to reliance on God, the confidence in the effectiveness of medical treatment also plays a significant role, if not a more significant role in jurists’ reasoning when determining the legal ruling of seeking medical treatment. Shafiʿī legal theorists hold that when an imperative is issued by the Lawgiver, it signifies the act as being obligatory. The *ḥadīth* of the Prophet, “Seek medical treatment” contains the verb in its imperative form. In the case of seeking medical treatment, Shafiʿī jurists have concluded that seeking medical treatment is a recommended, not obligatory, act. Why is seeking medical treatment not obligatory? We see that jurists factored in the level of certainty that exists regarding the effectiveness of a particular treatment when determining if seeking medical treatment is obligatory or recommended. According to al-Haythamī, seeking medical treatment in general is a recommended act, but if “the certainty of its benefit” exists, the act now becomes obligatory on a Muslim. Similarly, al-Ramlī explained further that, “seeking treatment is not obligatory, contrary to [the case of] one compelled to eat from a corpse and [the case of one] washing down a morsel of food with wine, due to the lack of certainty (*al-qaṭʿ*) in it being effective, which is contrary to these two cases.”[[16]](#footnote-16) So the default ruling of seeking treatment is that it is a recommended act due to the absence of certainty of the effectiveness of the treatment. Once certainty exists, such as in the case of applying a dressing to a phlebotomy site, taking the treatment becomes obligatory on a Muslim. There are cases where even high probability of an illness occurring is sufficient to make an act unlawful. In the case of dry ablution (*tayammum*), Shafiʿī jurists state that if a physician informs one there is a high probability that using water will result in a person getting ill (*al-ghālib ḥusūl al-maraḍ*), then it will be forbidden for one to use water for ablution and one would have to perform dry ablution instead.[[17]](#footnote-17)

6. **Conclusion (Omar Qureshi)**

This section will concentrate on demonstrating how this framework outlines the role of each expert when arriving at a decision on which treatment to adopt or developing policy. This will meet the needs of the individual Muslim patient and the Muslim community at large.

1. ʻAlī ibn Muḥammad al-Jurjānī. ed. Muḥammad ‘Abd al-Raḥmān al-Mar’ashlī. *Kitāb al-Taʻrīfāt*. (Beirut: Dār al-Nafāʾis, 2007), 232. [↑](#footnote-ref-1)
2. Ibid, 219. [↑](#footnote-ref-2)
3. Ibid, 203. [↑](#footnote-ref-3)
4. Umar Salih, *Maqasid al-shariah inda al-Imam al-Izz ibn Abd al-Salam* (Amman: Dar al-Nafa’is, 2003), 177. [↑](#footnote-ref-4)
5. Al-Izz b. Abd al-Salam, *Al-Fawa’id* ... [↑](#footnote-ref-5)
6. Salih, *Maqasid inda al-Izz*, (2003), 100-01. [↑](#footnote-ref-6)
7. Muhammad al-Tahir b. Ashur, *Maqasid al-Shariah al-Islamiyyah* (Amman: Dar al-Nafa’is, 2001). [↑](#footnote-ref-7)
8. Salih (2003), 101. [↑](#footnote-ref-8)
9. Abū al-Faḍl ˁAbd Allāh b. Maḥmūd al-Mawṣilī, *al-Ikhtiyār li-taˁlīl al-mukhtār* (Damascus: Dar Qubāˀ), 2:409-410. ˁAbd al-Raḥmān Dāmād Afandī, *Majmaˁ al-anhur sharḥ multaqā al-abḥūr wa bi-hāmishihi al-durr al-muntaqā sharḥ al-multaqā* (Istanbul: al-Maktabah al-Ḥanīfiyyah), 2:525. [↑](#footnote-ref-9)
10. Shaykh Niẓām et al., *al-Fatāwā al-hindiyyah* (Beirut: Dār al-Fikr, 1430/2009), 5:409. [↑](#footnote-ref-10)
11. Badr al-Din al-Simāwī, *Jāmiˁ al-fuṣūlayn*, §34, Kitāb al-waṣiyyah. [↑](#footnote-ref-11)
12. Shirwānī, ʻAbd al-Hamīd, Aḥmad Ibn Qāsim al-ʻAbbādī, Aḥmad ibn Muḥammad Ibn Ḥajar al-Haythamī, and Nawawī. 1972. *Haw*ā*shī al-Shirwānī wa-Ibn Qāsim al-ʻAbbādī ʻalȧ Tuḥfat al-muḥtāj*. [Beirut]: Dār Ṣādir, 3:182-183. [↑](#footnote-ref-12)
13. Ramlī, Muḥammad ibn Aḥmad, Aḥmad ibn ʻAbd al-Razzāq Maghribī, Nawawī, and ʻAlī ibn ʻAlī Shabrāmallisī. 1967. *Nihāyat al-muḥtaj ilá sharḥ al-Minhāj fī al-fiqh ʻalá madhhab al-Imām al-Shāfiʻī*. Egypt: Muṣṭafá al-Bābī al-Ḥalabī, 3:19. [↑](#footnote-ref-13)
14. *Hawāshī al-Shirwānī wa-Ibn Qāsim al-ʻAbbādī ʻalȧ Tuḥfat al-muḥtāj*, 3:182. [↑](#footnote-ref-14)
15. Ibid, 3:182. [↑](#footnote-ref-15)
16. Ramlī, Muḥammad ibn Aḥmad, *Nihāyat al-muḥtaj*, 3:19. [↑](#footnote-ref-16)
17. *Hawāshī al-Shirwānī wa-Ibn Qāsim al-ʻAbbādī ʻalȧ Tuḥfat al-muḥtāj*, 3:182. [↑](#footnote-ref-17)