YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

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**Shiur #08: Desecrating Shabbat for the Non-Essential Needs of a Dangerously Ill Person**

After three *shiurim* addressing the general issue of "permitted" versus "set aside," we will now begin to discuss various laws regarding *pikuach nefesh* that may be related to these two concepts.

We will begin in this *shiur* with a novel position, introduced by the *Maggid Mishneh* (Rabbi Vidal of Tolosa), that greatly increases the permitted actions in a situation of *pikuach nefesh.* Many *Acharonim* linked this novel position to the question of "permitted" or "set aside," but we will see over the course of this discussion that the *Maggid Mishneh's* position can be explained in different ways.

**Lighting a Fire for the Sake of a Sick Person**

 The Gemara in *Shabbat* (129a) states that one is permitted to light a fire on Shabbat for the sake of a woman who is giving birth. This allowance is brought in the Gemara without any dissenting opinions, but the Gemara is uncertain whether it applies specifically to a birthing woman or to any sick person. There are several variant readings of the passage which, of course, influenced the positions of the various *Rishonim*.

 The reading that Rambam apparently had establishes that the allowance is limited to a sick person who lost a significant amount of blood, which caused his body temperature to go down. This is how Rambam rules in the *Mishneh Torah*:

A fire may be kindled for a woman after she has given birth even in the summer, since cold is very difficult for a woman to bear after childbirth in the cold regions. In contrast, a fire should not be kindled for other sick people to warm themselves. Nevertheless, if a person let blood and became chilled, a fire may be kindled for him even in the summer. (*Hilkhot Shabbat* 2:14)

The Rambam clearly states that for an ordinary dangerously ill patient, we do not light a fire on Shabbat. That is to say, even in a situation that requires performing forbidden labors for the sake of *pikuach nefesh*, only those labors that are essential for the sick person's recovery are permitted.

The Ra'avad comments on Rambam's ruling:

Avraham said: In chapter *Yom ha-Kippurim* (*Yoma* 84), it was explicitly taught: One may warm water for a sick person on Shabbat, both for the purpose of giving him to drink, or of refreshing him. Perhaps it is dealing there with a dangerously ill person. (*Hasagat ha-Ravad*, *ad loc*.)

According to the Ra'avad, it is explicitly stated in the passage in *Yoma* that we take care of *all* needs of a sick person, including warming up water for him. Therefore, if the Gemara in *Shabbat* imposes any kind of restriction on lighting a fire, it is apparently dealing with the case of a sick person whose life is not in danger. If it *is* in danger, all of the sick person's needs are taken care of and a fire may be lit on his behalf.

**The Novel Position of the *Maggid Mishneh***

In keeping with his general practice, the *Maggid Mishneh* (*ad loc*.) tries to reconcile the Rambam's ruling. He explains that a distinction can easily be made between the passage in *Shabbat* and the passage in *Yoma*: It may be suggested that the Gemara in *Yoma* deals with heating water for drinking, which is an essential need and is certainly permitted even according to the Rambam. In contrast, the Gemara in *Shabbat* deals with lighting a fire for heat, which is not an essential need, as the sick person can usually be warmed in ways that do not involve desecration of Shabbat, e.g., with appropriate clothing. Therefore, lighting a fire is only permitted in those situations where the sick person's body temperature dropped as a result of blood loss and significant heating is required, as the Rambam rules in *Hilkhot Shabbat*.

Even though the distinction proposed by the *Maggid Mishneh* is simple and accords with his general approach of reconciling the Rambam’s rulings, at the end of his remarks, he decides to cancel his opinion in favor of the Ra'avad:

But I cancel my opinion before his opinion, because if one is dangerously ill, the implication is that we desecrate Shabbat for all his needs, even if withholding it will not endanger him. (*Maggid Mishneh*, *ad loc*.)

The *Maggid* *Mishneh* understands the Ra'avad as saying one is permitted to do anything for a dangerously ill patient, even actions that are clearly not an essential part of saving his life, and he ultimately decides in favor of this opinion.[[1]](#footnote-1)

The radical innovation of the *Maggid Mishneh* can be explained in three ways:[[2]](#footnote-2)

**1. All of a sick person's needs fall into the category of *pikuach nefesh***

It may be suggested that the *Maggid Mishneh* expands the definition of the sick person's needs, and considers a wide range of actions as *pikuach nefesh.* There are two possible reasons for this expansion.

One possible reason is that the very act of fulfilling the sick person's wishes and acting on his behalf will make him happy and raise his spirits, and thus contribute to his recovery. This approach is implicit in the words of the *Bi'ur Halakha* (by Rabbi Israel Meir Kagan, known as the Chafetz Chaim)*.* As we will see below, the *Bi'ur Halakha* rejects the *Maggid Mishneh*’s position, but he notes in the course of his discussion that *Responsa ha-Rashbatz* rules in accordance with the *Maggid Mishneh*. The Rashbatz (Rabbi Shimon ben Tzemach Duran) writes as follows:

Even to settle the mind of the sick person, even if it is not necessary for his cure, one may light a candle for him, even if he is blind and does not benefit from the light. The same is true about other labors that settle the sick person's mind, that they may be performed on Shabbat. (*Responsa ha-Rashbatz*, pt. I, no. 54)

We will discuss the issue of "settling the mind" more fully later in this series, but for our current purposes, we may conclude from the connection drawn by the *Bi'ur Halakha* between the Rashbatz and the *Maggid Mishneh* that the *Maggid Mishneh's* position is based on the idea that any action performed for the sick person settles his mind, even if it is not an essential part of saving his life.

A second possible reason for expanding the boundaries of *pikuach nefesh* is that when someone’s life is in danger, it is difficult to assess and define precisely what will benefit him and what will cause him harm. Therefore, any action that may benefit him, even if it is not essential, is defined as *pikuach nefesh.* This is implied by the words of the *Avnei Nezer* (Rabbi Avraham Borenstein):

In my humble opinion, the source of this [idea] – that even if withholding something does not [in itself] pose a danger, it is still considered a danger – is from that which is stated in chapter *Ha-Arel* (*Yevamot* 71b) that if a baby's eyes hurt him, even a slight pain, he is not circumcised. The halakhic authorities explain that the same applies to any slight pain or distress, for even if that pain does not pose a danger, we are concerned that that pain will join with the pain of the circumcision, and the baby will be in danger. (*Responsa Avnei Nezer*, *Orach Chaim* 453, letter 5)

A dangerously sick person is presumably in pain and distress, and therefore any further pain or distress may have a negative impact upon him, even in matters that do not seem to be an essential part of saving his life.

**2. "Permitted" and "set aside"**

Alternatively, it can be understood that the *Maggid Mishneh* takes the position that Shabbat is "permitted" to the extreme. In this perspective, the moment that a dangerously sick person stands before us, Shabbat becomes null and void, and any action may be performed on his behalf, even if it is not related to his rescue. This is how Rabbi Elchanan Wasserman explained the idea:

It may be suggested, according to what is stated in *Yoma*, that the prohibitions of Shabbat are permitted regarding communal sacrifices, and not set aside, and the same is true about circumcision on Shabbat, and therefore one must do on Shabbat just as would be done on a weekday…

This explains the position of those who permit, that as long as the sick person is in danger, the mitzvaof *pikuach nefesh* has not yet been completed, and it is as if he has not yet removed his hand. Since the mitzvahas not yet been completed, one must do it as he would on a weekday. Those who permit this maintain that the prohibitions of Shabbat are “permitted” in a situation of *pikuach nefesh.* (*Kovetz He'arot* 18)

A sick person whose life is in danger is subject to the mitzvaof *pikuach nefesh*, and when this mitzvais put in action, any act can be performed on behalf of the sick person.

**3. Concern about negligence**

Hundreds of years before the *Avnei Nezer*, the *Bi'ur Halakha*, and Rabbi Elchanan Wasserman, the Radbaz (Rabbi David ben Zimra) already raised the possibility of explaining the words of the *Maggid Mishneh* in light of the concept of "permitted." The Radbaz rejects this, however, and explains that the broad allowance of the *Maggid Mishneh* is based on a technical concern, lest people come to be negligent in their treatment of the sick person:

You asked if one is permitted to do things on Shabbat for a dangerously sick person, if those things are not so necessary.

Answer: This is a matter of dispute among the arbitrators of Jewish law, and I am one of those who are lenient. This is [seems to be] because we say that Shabbat is completely pushed aside in a situation of *pikuach nefesh*, and therefore one is permitted to do for him even things that are not necessary. But this is certainly not true, because there is no danger to life. However, things regarding which there is a slight need, it is possible that if you do not do for him things for which there is a slight need, this will lead to [not doing] things for which there is a great need. And it is well known that even a double uncertainty sets aside Shabbat. (*Responsa ha-Radbaz*, part IV, no. 130)

The Radbaz, who in other responsa (see, for example, part IV, no. 15), clarifies that the Shabbat prohibitions are "set aside" and not "permitted" in situations of *pikuach nefesh*, fears that meticulousness about each and every labor will lead to the omission of actions that are certainly necessary and essential. Therefore, even though he emphasizes that in his opinion the Shabbat prohibitions are "set aside," he maintains that every necessary – even indirectly – action should be taken.

To summarize, the words of the *Maggid Mishneh* may well be related to the fundamental question of "permitted" versus "set aside," but they can also be explained in light of the other principles proposed above.

**The Normative Halakha**

Rabbi Yosef Karo (in the *Kesef Mishneh* on the Rambam, and in the *Beit Yosef*, *Orach Chaim* 328:4) disagrees with the *Maggid Mishneh* and has difficulty accepting the possibility that actions that are not essential for saving the sick person's life would be permitted. This may be connected to his fundamental understanding that the Shabbat prohibitions are "set aside" in situations of *pikuach nefesh*, not "permitted," as we saw in the previous *shiur.*

Nevertheless, in the *Shulchan Arukh*, Rabbi Yosef Karo rules that we do for the sick person "everything that is ordinarily done for him on a weekday." The *Acharonim* point out that the source for this ruling is found in the words of the Ramban in his *Torat ha-Adam*, though as we saw in the previous *shiur*,the Rambam also uses the same formulation.

The *Magen Avraham*, followed by other commentators to the *Shulchan Arukh,* explains that even though the *Beit Yosef* has reservations about the *Maggid Mishneh*’s approach*,* the wording he uses in the *Shulchan Arukh* implies that he accepts that position in practice:

"Everything that is ordinarily done" – even if withholding something will not pose a danger [*Maggid Mishneh*, *Beit Yosef*]. (*Magen Avraham*, 328, no. 4)

The *Magen Avraham* draws attention to the words of the *Maggid* *Mishneh* cited by the *Beit Yosef*. Even though, as stated, the *Beit Yosef* rejects the words of the *Maggid Mishneh* that he cites, the *Magen Avraham* understands that they were accepted as the normative law.

The *Bi'ur Halakha* (*ad loc*., s.v. *kol she-regilim*) shares the *Magen Avraham*’s understanding, and discusses the subject at great length. He clarifies that even though it is possible to find various formulations in the words of *Rishonim* that support the position of the *Maggid* *Mishneh*, the vast majority of the *Rishonim* certainly disagree with it, and only permit on Shabbat actions that are essential for saving lives. His conclusion is that one should be stringent, certainly when it comes to labors forbidden by Torah law.

In the wake of the *Bi'ur Halakha*, *Shemirat Shabbat ke-Hilkheta* rules as follows:

Anything that is in any way needed by a dangerously sick person, whether it concerns his cure or it concerns his nutrition and the other needs of his body, if withholding it from the sick person will not worsen his condition or lessen his chances of overcoming his illness, *one may profane Shabbat on his behalf only with the violation of Rabbinic prohibitions*,and there as well, if possible, he should only do it with a change (*shinui*). (*Shemirat Shabbat ke-Hilkhata*, chap. 32, par. 24)

In contrast to the *Bi'ur Halakha*, Rabbi Ovadia Yosef tried to prove that the opinion of the *Maggid Mishneh* is the main opinion among the *Rishonim*, while clarifying that the entire discussion is based on the issue of "permitted" versus "set aside":

And according to this, it may be said that the *Maggid Mishneh* maintains that the Shabbat prohibitions are "permitted" in a situation of *pikuach nefesh*. Therefore, since Shabbat can be completely pushed aside, anything that is needed in any way by the sick person, even if withholding it will not endanger the sick person, it is permitted to do it on Shabbat in the way that it is ordinarily done on a weekday. But according to Rashi, the Shabbat prohibitions are "set aside" in a situation of *pikuach nefesh*, but not "permitted," and therefore we permit only that which will endanger the sick person if withheld, but nothing more. (*Responsa Yechaveh Da'at*, vol. 4, no. 30)*.*

Later in the responsum, he proves that even though Rabbi Yosef Karo maintains in the *Kesef Mishneh* and the *Beit Yosef* that Shabbat is "set aside" according to the Rambam, it stands to reason that when he wrote the *Shulchan Arukh*, he retracted this understanding and was more inclined toward the position that Shabbat is "permitted"; therefore, he ruled in accordance with the *Maggid Mishneh* that one is permitted to perform any labor for the sake of the sick person.

Based on this understanding, Rabbi Ovadia Yosef disagrees with the above-mentioned *Bi'ur Halakha,* and concludes:

It turns out that many of the *Rishonim* who maintain that the Shabbat prohibitions are “permitted” in a situation of *pikuach nefesh* agree with the *Maggid Mishneh*, and therefore the *Shulchan Arukh* correctly ruled in accordance with their view. The Rogotzover Gaon already explained in *Tzofnat Pa'aneach* (beginning of chapter 2 of *Hilkhot Shabbat*), regarding the position of the Rambam, that with a dangerously sick person, one should not think that there *is* a prohibition of Shabbat but the danger sets it aside, but rather that Shabbat itself is set aside in a situation of danger, and therefore one is permitted to take care of all of his needs on Shabbat, even if without them he would not die. (*Responsa Yechaveh Da'at*, ibid.)

It should be noted that at the end of the responsum, Rabbi Ovadia slightly qualifies his words. He quotes the *Shulchan Arukh ha-Rav* and *Responsa Tzemach Tzedek* (*Orach Chaim* 38), who clarify that even if we rule in accordance with the Rambam (and others) that Shabbat is "set aside," there is room to be lenient in accordance with the *Maggid Mishneh* – apparently based on the other explanations offered above, according to which any action can be defined as an essential action that contributes to the sick person's rescue and recovery. Rabbi Ovadia does not insist, then, specifically on the position of "permitted" as opposed to "set aside," but he certainly insists that the law is in accordance with the *Maggid Mishneh* that one is permitted to take care of all of a sick person's needs.

**“The Gray Area”**

The dispute between the *Bi'ur Halakha* and Rabbi Ovadia Yosef seems to be a clear and polar dispute. However, when we come to examine practical applications of this controversy, we are liable to encounter a difficulty. The *Bi'ur Halakha*, despite his vigorous conclusion, imposes a clear proviso:

You should further know that even according to those who prohibit [profaning Shabbat for the sick person's non-essential needs], that is only when it is clear to us that withholding the thing in question will not worsen his illness. But if there is concern that by withholding the matter, he will become weaker and his illness will worsen, we profane Shabbat for him… According to the Meiri, if through the profanation his body will become stronger, we also do not withhold it from him, since he is a sick person whose life is in danger. (*Bi'ur Halakha* 328, 4)

That is to say, even if we only allow actions that are related in their very essence to saving the sick person's life, those actions must be examined from an expansive perspective. Any action regarding which there is even the smallest concern that withholding it would lead to a worsening of the sick person's condition, or where there is some reason to believe that it might strengthen his body, is certainly permitted. A practical example of this involves the use of painkillers: the halakhic authorities (see, for example, *Shemirat Shabbat ke-Hilkhata*, chap. 32, par. 23, and note there)assume as a simple matter that one is permitted to desecrate Shabbat, even by violating Torah prohibitions, in order to ease the pain of a dangerously sick person. This is based on the perception that pain weakens the body and exacerbates the illness.[[3]](#footnote-3)

On the other hand, Rabbi Ovadia Yosef, at the end of his responsum, discusses the issue of operations that the doctors themselves determine are not urgent and can be performed after Shabbat; he understands that they are forbidden even according to the *Maggid Mishneh*. We will deal with this issue of postponing treatment in the next *shiur*, but of note here is that even Rabbi Ovadia is telling us, in effect, that *not* everything is permitted. This is clarified in the book, *Orchot Shabbat*:

It is clear that even the *Maggid Mishneh* was not speaking about things that fall into the category of luxuries, but only about things that can be considered needs of the sick person. This is a matter that is difficult to define, and therefore action should only be taken in accordance with the decision of a Torah sage. (*Orchot Chaim*, chap. 20, note 23)

Our revered teacher Rabbi Aharon Lichtenstein *zt"l* once asked: If a dangerously sick person says that he wants to read a newspaper or listen to the radio on Shabbat, is it permissible to profane Shabbat in order to fulfill his request?

Of course, if a qualified doctor says that the patient is under tremendous pressure and listening to the radio is the only thing that will calm him down, it stands to reason that this would be permitted according to all opinions. But in the absence of such a medical opinion, is it really possible to comply with every request of a sick person, even if it is clearly unnecessary? It was clear to Rabbi Lichtenstein that no matter how far we expand the definition of "all his needs," and even according to the opinion of "permitted," some kind of limit must be set.

In matters of Halakha, it is not always possible to draw an unequivocal boundary, and inevitably there will be a gray area of actions that, on the one hand, are not essential for saving the sick person's life, while, on the other hand, they are not completely incidental. This is how the issue is formulated in the book, *Piskei Teshuvot*:

Regarding something that will not improve the sick person's condition, and withholding it will not worsen it, but it is ordinarily done for him on a weekday, and the sick person has a slight need for it – we come to the dispute between Rashi and the *Maggid Mishneh*, and it is right to be stringent with respect to Torah prohibitions. (*Piskei Teshuvot* 328, letter 14)

The convoluted wording is quite evident: it will not improve the sick person's condition, but withholding it will not worsen it, and yet the sick person has a slight need for it.

**Possible Practical Implications**

We will conclude with three examples that may nevertheless depend on this dispute in practice:[[4]](#footnote-4)

**1. Eating and drinking small amounts on Yom Kippur**

I mentioned in the previous *shiur* that Rav Chaim and Rav Yitzchak Zev of Brisk asserted that a dangerously sick person is permitted to eat on Yom Kippur in a regular manner, and need not eat in small amounts. The Griz (*Hilkhot Shevitat Asor* 2:8) emphasizes that the source for this novel position is in the words of the *Maggid Mishneh*: With respect to a person who is already defined as a dangerously sick person, we take care of all his needs, which includes eating in a regular manner (without requiring small amounts, "*le-shi'urin*").

**2. Sutures for cosmetic purposes**

Rabbi Shlomo Zalman Auerbach was asked about a person who was cut in his face and requires stiches: The basic suturing falls into the category of *pikuach nefesh*, so that the wound not become infected, and the like. But the doctor wants to add sutures so that there will not be a scar. Of course, the additional sutures are not life-saving, but they are important for cosmetic reasons. Rabbi Auerbach is in doubt:

Regarding a person who was injured on Shabbat and the wound requires sutures due to the danger, and five stitches suffice to remove the danger, but then there will be an ugly scar, whereas with seven stitches there will be less of a scar – it seems that one should not add stitches for cosmetic purposes…

However, there is still much to discuss about the matter, and it seems more correct to me that just as with circumcision, as long as [the *mohel*] has not turned away, he circumcises even on Shabbat, and goes back even for stray pieces of flesh that need not be removed; so too here, just as Shabbat is set aside to save a person from danger, so one is permitted to finish what he started and save the person from a scar that will cause him shame and distress all his life. Just as that is considered there the end of the circumcision, so too here it is the end of [the process of] saving the person's life, and it is not reasonable to distinguish between "set aside" and "permitted." (*Responsa Minchat Shlomo Tinyana*, 35, letter 2)

Rabbi Auerbach clarifies that it would be possible to base his leniency on the concept of "permitted," but he rejects this idea and establishes that even according to those who say "set aside," what we have here is an extended rescue operation being carried out in accordance with the established medical protocol that is followed during the week. Even though Rabbi Auerbach does not mention the *Maggid Mishneh* in this context, it stands to reason that his leniency rests on his position.

**3. Disconnecting a patient from devices not for the sake of *pikuach nefesh***

The book *Orchot Shabbat* states:

Regarding a dangerously sick person who is connect to machines, the connection to which and disconnection from which involve forbidden labors, and he wants to walk a little, and for this he must be disconnected from the machines and then reconnected to them when he returns to his room:

A distinction must be made between different cases: a) if the walk is necessary for the sick person's recovery, even a Jew is permitted to disconnect him from the machines; b) if according to the doctors, there is no medical need for walking, he should not be disconnected from the machines by a Jew, but it may be done by a non-Jew, if the sick person feels a need to go out for a little walk. (*Orchot Shabbat* 20, 25)

Here we have another example of a procedure for which there is no clear medical need, but the sick person wants it. Based on the *Bi'ur Halakha's* ruling, it was determined that leniency may be practiced in this case only by way of a non-Jew performing the prohibited action. It stands to reason that according to the approach of Rabbi Ovadia Yosef, disconnection from and reconnection to the machines in such a situation would be permitted even by a Jew, for ultimately, this is the sick person's need.

(Translated by David Strauss)

1. Some *Acharonim* claim that the opinion of the *Maggid Mishneh* has a source in the Tosefta (*Shabbat* 16:12). Regarding this, see *Responsa Tzitz Eliezer*, part VI, no. 14. [↑](#footnote-ref-1)
2. For a succinct discussion of this point, see *Minchat Asher – Inyanei Pikuach Nefesh*, no. 1; and *Responsa Tzitz Eliezer* (above, note 1). A much longer and more comprehensive discussion and explanation of the position of the *Maggid Mishneh* can be found in *Responsa Le-horot Natan*, 5, 22-27; and in *Mishnat Pikuach Nefesh*, no. 17. [↑](#footnote-ref-2)
3. Recently (Marcheshvan 5782), the Ynet website [published](https://www.ynet.co.il/judaism/article/hymodkvit?utm_source=m.ynet.co.il&utm_medium=social&utm_campaign=whatsapp) a halakhic ruling, issued by several rabbis, allowing an IDF soldier who was seriously injured and in severe pain to use medical cannabis on Shabbat, despite the fact that this involves the violation of a Torah prohibition. Without going into the different aspects of using this type of solution, the principle that alleviating the suffering of a dangerously sick person is defined as *pikuach nefesh* is a simple and agreed upon principle. [↑](#footnote-ref-3)
4. For further discussion of two examples, see the above-mentioned book, *Mishnat Pikuach Nefesh*. [↑](#footnote-ref-4)