YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

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**Shiur #09: Postponing Treatment until Motzaei Shabbat**

**I. Introduction**

In the previous *shiur*, we dealt with the novel position of the *Maggid Mishneh* regarding actions that are not essential for saving the life of a dangerously ill person. As we saw, one of the ways to explain his position relates to the question of whether the Shabbat prohibitions are "permitted" in a situation of *pikuach nefesh*, or only "set aside," though there are also alternative explanations.

We will now move on to a related matter, which some have also explained in terms of "permitted" versus "set aside"; some have even connected it to the words of the *Maggid Mishneh.*

There is a clear assumption that when urgent treatment is required for the purpose of *pikuach nefesh*, we profane Shabbat to save the person's life. There are, however, situations in which the medical diagnosis establishes that we are dealing with a patient whose life is certainly in danger and therefore treatment and assistance are necessary, but there is no urgency in providing that treatment; waiting a few hours or even a few days will not endanger the patient. Is it permissible to desecrate Shabbat in such situations, since the patient does suffer from an ailment that puts his life in danger? Or must we delay treatment and wait until Motzaei Shabbat, in a case where it is possible to do so?

**II. The Talmudic Passage – Eight-Day Treatment**

It seems this question is explicitly discussed in the Gemara*.* The Mishna states: "Any case of uncertainty concerning a life-threatening situation overrides Shabbat" (Mishna *Yoma* 8:6), and the Gemara explains that this gives rise to another law:

Rav Yehuda said in the name of Rav: Not only in the case of an uncertainty regarding this Shabbat, but even in the case of an uncertainty regarding the following Shabbat. How so? If, for example, the [diagnosis] estimates an eight-day [crisis], the first day of which falls on Shabbat. You might have said: Let them wait until the evening, so that two Shabbats not be profaned because of him. Therefore, it teaches [that we immediately profane Shabbat for his sake]. (*Yoma* 84b)

The doctors require eight days of treatment, so if they start it on Shabbat, two Shabbats will be profaned, whereas if they postpone treatment until Motzaei Shabbat, only one Shabbat will be profaned. The Gemara explicitly establishes that we do not make such calculations; rather, if the patient's life is in danger, treatment must be started immediately.

These words of the Gemara were codified without dissent by the Rambam (*Hilkhot Shabbat* 2:2) and by the *Shulchan Arukh*:

Regarding a patient who is dangerously ill, who was diagnosed on Shabbat as needing eight days of a particular treatment which involves the desecration of Shabbat, we do not say that we should wait until the evening so we desecrate only one Shabbat on his behalf. Rather, the treatment is begun immediately, on Shabbat, even though this involves the desecration of two *Shabbatot*. (*Shulchan Arukh Orach Chaim* 328:11)

**III. “An Ailment that Waits”**

Despite the seeming simplicity of the Talmudic passage – which, as noted, was codified without dissent – we find that the Ramban issues the following ruling in his *Torat ha-Adam*:

But when we know and are familiar with the fact that that ailment waits [i.e., develops slowly], and desecrating Shabbat is not necessary, it is certainly forbidden to do so. (*Torat ha-Adam*, *inyan ha-sakana*, letter 5)

In other words, if it is clearly possible to wait until Motzaei Shabbat without the patient's condition worsening, there is no allowance to desecrate Shabbat. This law was also codified in the *Shulchan Arukh*:

But when we know and are familiar with the fact that that ailment waits, and desecrating Shabbat is not necessary, it is forbidden to desecrate Shabbat on his behalf, even though it is a life-threatening ailment. (*Shulchan Arukh Orach Chaim* 328:4)

The *Acharonim* (*Peri Chadash*, *Ma'amar Mordekhai*, *Mishna Berura*, and others) were sensitive to the apparent contradiction between these two rulings: On the one hand, we immediately begin treatment and do not wait until Motzaei Shabbat, but on the other hand, we push off non-urgent treatment until Motzaei Shabbat, even if the patient's life is certainly in danger!

There is, however, a simple resolution: The Ramban is talking about an ailment that we know with certainty will not get worse before Motzaei Shabbat, and therefore we are required to wait until Motzaei Shabbat. The Talmudic passage, on the other hand, speaks of an ailment regarding which there is no such certainty, and therefore it rules that the desecration of two *Shabbatot* is not a factor that should be taken into account; rather, treatment must be started immediately. The Mishna Berura explains as follows:

There is no contradiction. There, he knows that waiting until the evening will not cause a worsening of the patient's condition, which is not the case here. (*Mishna Berura* 328, no. 32)

This distinction also follows from a precise reading of Rashi’s comments on the Gemara in *Yoma*:[[1]](#footnote-1)

Not only in the case of an uncertain danger to human life this Shabbat, but even if there is no uncertainty regarding this Shabbat, for it is clear to us that he will not die today, but there is uncertainty that if he is not treated today, **perhaps he will die next Shabbat.** (Rashi, *Yoma* 84b, s.v. *lo safek*)

It would appear from Rashi that on this Shabbat there is no threat to the patient's life, but there is a real fear that by next Shabbat, it will be in danger. In light of this, we can understand that in a case where it is clear that postponing treatment will not put the patient in danger, neither this Shabbat nor even next Shabbat, one must indeed wait until Motzaei Shabbat before administering treatment.

In the book *Piskei Teshuvot*, the matter is summarized as follows:

From here we learn regarding medical institutions of all kinds, that the patients, the members of the medical staff, and the maintenance and administrative personnel must know that there is no blanket allowance to do everything as it would be done on a weekday. Rather, any procedure using electricity, or medical test, or medical record-keeping, or treatment of any kind, or maintenance or cleaning activity, must be discussed on a case-by-case basis, and careful consideration must be given as to whether it is in fact necessary owing to the condition of the patient or patients or "to settle their minds," or whether it is possible to wait until Motzaei Shabbat without concern about danger to or deterioration of the patient's condition. (*Piskei Teshuvot Orach Chaim* 328, letter 15)

**IV. “Permitted” and “Set Aside”**

Beyond the basic discussion of the issue as it follows from the passage in *Yoma*, we must examine the relationship between this issue and the question of "permitted" versus "set aside." In this context, Rabbi Aryeh Leib Broda[[2]](#footnote-2) writes:

I am uncertain regarding a dangerously sick person whom the doctors ordered to be treated, but they said that the treatment could be pushed off until after Shabbat and it need not be done on Shabbat, and delaying the treatment until after Shabbat would not put him in greater danger. Do we say that Shabbat cannot be set aside since there is no danger in waiting until after Shabbat, or perhaps since he is a dangerously sick person and he needs that treatment, we are obligated to hasten and advance his treatment? I did not find this matter explicitly discussed in the books, so I decided to look into the matter a bit. (*Responsa Mitzpeh Aryeh* [1st ed.], no. 4)

The manner in which the question is presented is quite surprising: this appears to be the precise case of "an ailment that waits," regarding which the *Shulchan Arukh* ruled in accordance with the Ramban that Shabbat must not be profaned! Instead of citing thatruling, however, the *Mitzpeh Aryeh* cites the beginning of the paragraph in the *Shulchan Arukh*, where the ruling is issued that we do for a sick person "everything that is ordinarily done for him on a weekday." As we saw in the previous *shiur*, many *Acharonim* inferred from this that the *Shulchan Arukh* rules in accordance with the *Maggid Mishneh*, that one is permitted to take care of all the sick person's needs (even those which are not directly necessary for saving his life). The author of *Mitzpeh Aryeh* does in fact maintain that the question of whether treatment must be pushed off to Motzaei Shabbat depends on this very question: According to the *Maggid Mishneh*,the treatment should not be delayed; according to those who disagree with him, we do in fact wait until Motzaei Shabbat. His words imply that he wishes to expand the matter of "permitted" and "pushed aside," and establish that if we adopt the position of "permitted," it is easier to say that the treatment should be carried out on Shabbat, and should not be postponed.[[3]](#footnote-3)

However, later in his discussion, the *Mitzpeh Aryeh* retracts this idea to a certain extent, and proposes that even those who disagree with the *Maggid Mishneh* would concede that since we are dealing here with a procedure that is essential for saving the patient's life (essential, but not urgent [!]), it is permitted on Shabbat itself.

At the end of his responsum, he adds that if in any case Shabbat needs to be desecrated for the sake of that patient, then it is permissible to desecrate Shabbat and perform procedures that could have been postponed until after Shabbat. This is similar to the argument that "since it is permitted, it is permitted," which we saw in the previous *shiur* in the words of Rabbi Elchanan Wasserman (*Kovetz He'arot* 18). But if there is no other desecration of Shabbat, the treatment should be postponed until after Shabbat.

Without a doubt, the *Mitzpeh Aryeh's* entire position is wholly novel, and it is astonishing that he does not mention the explicit ruling of the *Shulchan Arukh*. Indeed, Rabbi Ovadia Yosef rejects his words:

I saw that the Gaon Rabbi Aryeh Leib Broda in *Responsa Mitzpeh Aryeh*… It seems to me that even according to the *Maggid Mishneh*, since the doctors assert with certainty that there is no concern of increased danger in postponing the treatment until after Shabbat, Shabbat may not be desecrated for his sake. The *Maggid Mishneh* only issued an allowance where Shabbat was already being desecrated for the sick person's sake. Therefore, we are permitted to do things needed by the sick person, even though withholding them from him would not put him in danger. (*Responsa Yechaveh Da'at*, part IV, no. 30)

Rabbi Ovadia goes on to explain that even if we do adopt the view that Shabbat is completely "permitted" in a situation of *pikuach nefesh*, as many have tried to infer from the words of the *Maggid Mishneh* and the *Shulchan Arukh*, that only applies when it is necessary to desecrate Shabbat for the sake of the patient. But if the doctors determine with certainty that the procedure is essential but not urgent, all agree that there is no allowance to desecrate Shabbat.

On the other hand, Rabbi Ovadia also emphasizes the obvious, that if there is even a remote concern that the patient's condition will deteriorate by Motzaei Shabbat, it is permissible to do everything necessary already on Shabbat. This is true, of course, regardless of whether Shabbat is "permitted" or "set aside."

**V. Life-Saving Surgery that is Not Urgent**

Practical examples of the issue under discussion can be found with regard to various types of surgeries, which are certainly life-saving but are not urgent. The author of *Reponsa Beit Avi*[[4]](#footnote-4) grapples with the issue:

Regarding his question, that it happens many times that a dangerously sick person is admitted to a hospital on Shabbat and the doctors determine after consultation that it is necessary to perform a major operation on him, but in their opinion there is no urgency that the operation be performed on Shabbat, for even if it is postponed a day or two he will not be at greater risk…

It seems to me that in a matter of *pikuach nefesh*, one must be very cautious, and the one who is quick is praiseworthy and the one who asks questions sheds blood.[[5]](#footnote-5) The cause for the question is that, on the one hand, according to his present condition, we can wait, because there is no danger in waiting, as was determined by the doctors, but on the other hand, since the sick person is dangerously ill before us, who knows what the future will bring?…

It seems that where there is no danger in delaying, we do not permit him to do forbidden things… However, it seems more reasonable to be stringent and perform the operation immediately, and may God save us from mistakes. (*Responsa Beit Avi*, part III, *Orach Chaim* no. 82)

The author's struggle is evident, but his conclusion is to allow the surgery to be performed on Shabbat.

Rabbi Dr. Mordechai Halperin (in his book *Refu'a*, *Metzi'ut* *ve-Halakha*: *U-Leshon Chakhamim Merape*, portal 1, no. 1, chap. 5) deals extensively with this issue, with respect to hip surgery which is often performed on elderly persons who slipped and fell. Rabbi Halperin explains that according to all the experts with whom he consulted, the surgery can be performed within seventy-two hours of the fall, which means it is not urgent to do it specifically on Shabbat. Nevertheless, Rabbi Halperin rules that is permissible to perform the surgery on Shabbat. He cites various reasons for this conclusion, including the words of the *Maggid Mishneh* that it is permissible to perform "all of the sick person's needs."[[6]](#footnote-6)

Rabbi Halperin writes that after ruling that the surgery is permitted, he spoke with Rabbi Prof. Avraham Sofer Avraham (author of the series of books on medical Halakha, *Nishmat Avraham*). The latter’s opinion was to be stringent and prohibit the surgery, for if all the experts maintain that the surgery can be delayed, there is no allowance to operate on Shabbat. The two doctor-rabbis agreed to consult with two of Rabbi Shlomo Zalman Auerbach's most prominent students: Rabbi Yehoshua Yeshaya Neubert and Rabbi Avigdor Nebenzahl. Rabbi Neubert ruled in accordance with the opinion of Prof. Avraham,[[7]](#footnote-7) to postpone the operation until Motzaei Shabbat, whereas Rabbi Nebenzahl ruled as did Rabbi Halperin, to perform the surgery on Shabbat.

Since the question was not resolved, they decided to bring it before Rabbi Shlomo Zalman Auerbach himself, and he ruled in accordance with the view of Rabbi Nebenzahl: since we are dealing with a life-saving operation for a dangerously sick person, it is permissible to perform the operation on Shabbat.

It turns out that despite the clear ruling of the *Shulchan Arukh* that in the case of "an ailment that waits," treatment is postponed until Motzaei Shabbat, in practice there is always concern that the patient's condition will deteriorate or that some other problem may arise, in addition to the issue of additional aches and pains. Therefore, Rabbi Shlomo Zalman Auerbach's position is to provide the patient whose life is in danger with the necessary treatment.

**VI. The “Give a Shoulder” Campaign on Shabbat**

The question under discussion was stirred up again in full force at the beginning of the "Give a Shoulder" campaign – Israel's COVID-19 vaccination program in the winter of 5781.

The medical establishment had agreed that the vaccine has the power to stop the spread of the epidemic and prevent serious illness and death. However, since the vaccine is only a preventive treatment, there did not seem to be any urgency to vaccinate people specifically on Shabbat;[[8]](#footnote-8) even those vaccinated on a weekday would be protected.

A similar question was posed a little more than 200 years ago to Rabbi Elazar Fleckeles, a student of the Noda BiYehuda in Prague and a member of his Bet Din. He writes in his responsa, *Teshuva mei-Ahava*, that he was asked by his father-in-law whether it was permissible to vaccinate a child against smallpox on Shabbat, when the only person authorized to give the vaccine is the district doctor and he happened to be in the city precisely on Shabbat. The questioner argued that we do not know what the future will bring, "and we are concerned that [the child] might die," thus it should be permitted to give him the vaccination. The *Teshuva mei-Ahava* grapples with the issue, especially in view of the difficulty of defining matters precisely: a delay of a day or two is certainly not dangerous, but on the other hand, a delay of several years is undoubtedly dangerous. How, then, are we to assess the danger and set a clear limit? In the end, the *Teshuva mei-Ahava* permits the vaccination, but he bases the allowance on the fact that the doctor is not Jewish and child’s father will not violate any Torah prohibition.

The Chief Rabbi of Israel, Rabbi Yitzchak Halevi Herzog, addressed the issue briefly in a responsum dealing with the obligation to listen to professionals in the fields of medicine and security (*Responsa Heikhal Yitzchak*, *Orach Chaim* 31; this responsum was already mentioned in *shiur* 3, and will be discussed in greater detail later in the series). He clarifies that if during an epidemic the doctors say that people must be vaccinated quickly, one must accept their directives and vaccinate on Shabbat even when this involves violation of Torah prohibitions. As mentioned, Rabbi Herzog does not explicitly refer to a particular vaccine, but to the principle of adhering to accepted medical opinion. Indeed, *Shemirat Shabbat ke-Hilkheta* (chap. 32, no. 2) permits vaccinations on Shabbat, "if the doctor thinks it is urgent."

Rabbi Shlomo Zalman Auerbach addressed the issue in a more explicit manner. In an important responsum in which he seeks to define the term "*pikuach nefesh*," he writes:

As for the fundamental issue of what is considered an uncertain life-threatening situation, and what is not, and where do we draw the line, I too have great doubts about it. But based on logical reasoning, it seems to me that anything that most people run away from, like one who runs away from danger, is considered an uncertain life-threatening situation, to which we apply the rule of "'that he may live by them' – and not die by them." (*Responsa Minchat Shlomo*, part II, no. 37)

In *Responsa Tzitz Eliezer* (part IX, no. 17, chap. 2, sec. 9), the author discusses in detail the definition offered by Rabbi Shlomo Zalman, which is based primarily on ordinary conduct during the week as a measure of *pikuach nefesh.* The topic cannot be discussed fully here, but what is important for our purposes is the example Rabbi Shlomo Zalman offers to explain his position:

A somewhat related example of this is giving the smallpox vaccine for children. Even though, by strict law, perhaps one should really hurry and do it as soon as possible if a doctor says the time has already come to do it, nevertheless, people do not ordinarily do it with urgency and haste. And therefore, even if there really is a certain danger in the matter, this is like what *Chazal* said: “But today, when many are accustomed to [a particular unsafe practice], ‘the Lord preserves the simple’ (*Tehillim* 116:6),”[[9]](#footnote-9) and God forbid that one should desecrate Shabbat for this. Which is not the case if one is in a situation where he knows with certainty that if he does not administer the vaccination against smallpox now, on Shabbat, he will have to wait four or five years – since people are certainly afraid to remain like that for such a long time, this may be considered *pikuach nefesh* that sets Shabbat aside. (*Responsa Minchat Shlomo*, ibid.)

Just like the *Teshuva mei-Ahava*, Rabbi Shlomo Zalman clarifies that fundamentally, there is no allowance to vaccinate on Shabbat, even though the vaccine saves lives, for a delay of a day or two is insignificant. However, as stated above, it is very difficult to offer a clear measure in this matter, and it seems to me that it was for this reason that Rabbi Shlomo Zalman gave the example of "four or five years" – such a delay is certainly significant, and would justify the desecration of Shabbat. As for a shorter delay, Rabbi Shlomo Zalman refrains from establishing fixed rules.

Regarding actual practice, Rabbi Asher Weiss (*Minchat Asher Magefat ha-Corona*, no. 153-155) writes that it is forbidden to vaccinate against the coronavirus on Shabbat, because a delay of one or two days is not life-threatening; furthermore, the vaccine was only developed after many months during which the epidemic raged and protection against it was based on different means (such as social distancing and wearing masks), which can be continued until one receives the vaccine. In the course of his discussion, however, he tends to agree with the *Teshuva mei-Ahava* that if it is possible to receive the vaccine without violating a Torah prohibition (he was answering questions sent from the United States and Great Britain, in cases where the procedures would be performed by non-Jews), there is room for leniency, especially if there is a real fear that somebody who misses an appointment that was scheduled for him on Shabbat will be forced to wait for an extended period of time.

It was reported in the media in the name of Israel's Chief Rabbi, Rabbi David Lau, that he as well holds this position, and forbids Shabbat desecration for the purpose of vaccination.

In contrast, Rabbi Dr. Mordechai Halperin maintains that considerations of "communal *pikuach nefesh*" are liable to lead to a different conclusion. Later in the series, we will examine the issue of communal *pikuach nefesh* in great detail, but for now we will suffice with the following citation:

The sooner herd immunity is reached, the more lives will be saved. Therefore, if in order to reach this level of immunity sooner, it is necessary to vaccinate people on Shabbat, this is permitted, even if it involves violating Torah prohibitions. The above is true regarding the issue of communal *pikuach nefesh.* As for the individual, one is permitted to take a small risk and postpone receiving a vaccine for a day or two after Shabbat. But if refraining from taking the vaccine on Shabbat will cause a longer delay in receiving the vaccine, the vaccine should not be postponed, and it is permissible to go on Shabbat to receive it. In any case, one should minimize the prohibited labors, and use a *shinui* whenever possible.[[10]](#footnote-10)

Later in his discussion, however, he emphasizes that there are far-reaching public aspects to a blanket allowance to vaccinate on Shabbat, especially when in most places vaccines are not administered "around the clock." The question is indeed a weighty one, but it does not necessarily pertain to the matter at hand, because there may be good reasons for not vaccinating at night, such as there not being enough medical teams and logistical support teams (cleaning, secretaries, etc.) to work around the clock, and also that if a person is scheduled to receive a vaccine very late at night, it is likely that he will not arrive at all.

In any case, in practice, Rabbi Halperin qualifies his position and states that in this matter, regarding the public aspects that sometimes border on "the desecration of God's name" with Shabbat liable to become like a weekday, the matter must be decided by the leading authorities of the generation.[[11]](#footnote-11) But we learn from the discussion as a whole that the question of whether indeed an ailment "waits," or whether it is deemed urgent to offer medical treatment on Shabbat itself, is a broad and complicated issue that depends on many variables.

(Translated by David Strauss)

1. This has been noted by several halakhic authorities. See, for example, *Responsa Minchat Yitzchak*, part I, no. 28, letter 4. [↑](#footnote-ref-1)
2. Rabbi Aryeh Leib Broda was one of the leading Torah authorities of his generation, first in Lithuania and afterwards in Jerusalem, at the beginning of the 20th century. Rabbi Aryeh Leib was the brother and successor of the "Saba of Kelm," and one of the leaders of the Mussar movement. [↑](#footnote-ref-2)
3. It may be inferred from *Responsa ha-Radbaz* (part IV, no. 66) that the Ramban's very claim regarding "an ailment that waits" is based on the rationale of "permitted," as opposed to "set aside," but this is not stated explicitly in the words of the Radbaz. [↑](#footnote-ref-3)
4. Rabbi Yitzchok Isaac Liebes was a Holocaust survivor and a well-known and important halakhic arbiter in the United States. He also served as Rosh Av Bet Din of the Igud ha-Rabbanim of America. He died in 5760. [↑](#footnote-ref-4)
5. *Shulchan Arukh Orach Chaim* 328:2. [↑](#footnote-ref-5)
6. Another reason offered there is the desire to alleviate the patient's pain. As noted in the previous *shiur*, pain relief is defined as *pikuach nefesh* – and there is also another reason: the practical concern that there may be more urgent surgeries after Shabbat, which could cause the operation to be further postponed. [↑](#footnote-ref-6)
7. This is how his position is cited in *Nishmat Avraham*, 328, no. 17. There, he connects the discussion to the question of vaccinations on Shabbat, which will be addressed below. [↑](#footnote-ref-7)
8. Vaccination on Shabbat involves both the act of the vaccination itself – which according to the majority of halakhic authorities does not involve a Torah prohibition, because it is a subcutaenous injection that does not require the opening of a vein (see *Responsa Tzitz Eliezer*, vol XV, chap. 14, and the summary in *Orchot Shabbat*, vol. II, chap. 20, 199-208) – and the logistical support, which includes registration, for example. [↑](#footnote-ref-8)
9. *Yevamot* 72a. [↑](#footnote-ref-9)
10. The responsum was published on the website of the The Schlesinger Institute for Medical-Halachic Research under the title *She'eilot Ma'asiyot shel Chisunei Corona be-Shabbat* ([here](https://www.medethics.org.il/ask/%D7%A9%D7%90%D7%9C%D7%95%D7%AA-%D7%9E%D7%A2%D7%A9%D7%99%D7%95%D7%AA-%D7%A9%D7%9C-%D7%97%D7%99%D7%A1%D7%95%D7%A0%D7%99-%D7%A7%D7%95%D7%A8%D7%95%D7%A0%D7%94-%D7%91%D7%A9%D7%91%D7%AA/)). In the original, the responsum is divided into sections and includes highlighting that has been removed here for ease of reading. [↑](#footnote-ref-10)
11. This is what the *Chazon Ish* wrote to Rabbi Moshe Zvi Neriah (*Pe'er ha-Dor*, part III, p. 186): "When the boundaries of *pikuach nefesh* expand and reach a situation of completely uprooting the Halakha, it reaches the state of desecration of God's name, and then we say that the desecration of God's name sets aside *pikuach nefesh*… The matter is entrusted to the sages of the generation who can decide the matter based on their general impression, and they must consider every case in accordance with the situation and the hour." [↑](#footnote-ref-11)