



Chillul Shabbos and Experimental Therapy

***"And Moshe said to Aharon, Take the fire-pan and place fire on it from upon the altar and place incense ..."* (Bamidbar 17:11)**

In this week's Parsha, following the death of Korach and his followers, a raging plague swept through the Jewish People. The Posuk above describes how Moshe instructed Aharon to offer *Ketores* in order to halt the plague.

How did Moshe know that *Ketores* would be effective in stopping the plague? Hashem did not command Moshe to offer *Ketores* – to the contrary, He sent the plague as a Heavenly decree in the first place! The Gemara in *Maseches Shabbos* (89a) answers that the secret power of the *Ketores* was revealed to Moshe by none other than the *Malach ha'Maves* (the angel of death). When Moshe ascended to Heaven to receive the Torah, he received gifts from all of the *Malachim*. The gift of the *Malach ha'Maves* was the knowledge of the power of *Ketores* to halt a plague. In the words of the Gemara, "If the *Malach ha'Maves* hadn't revealed this to Moshe, how would he have known it?"

How was Moshe permitted to offer *Ketores* outside of the Mishkan and the context of the *Avodah*, seemingly in violation of an *Issur de'Oraisa*? Obviously, this was a situation of *Pikuach Nefesh*. However, the *Ketores* was unproven as an effective means of saving lives. Can we derive from this episode that one may violate the laws of the Torah to save lives via unproven, experimental methods?

Rav Shlomo Kluger *zt"l* discusses this question in his *Sefer Uvacharta ba'Chaim* (87):

"I am greatly distressed by the Chillul Shabbos that was committed on the basis of a terrible and twisted ruling in the village of Zlatchov, when a Posek instructed to write a Kvittel¹ and to travel more than three Parsa'os (which are Issurim d'Oraisa). In truth, this ruling is extremely faulty, for although it is a clear Halacha that Pikuach Nefesh overrides Shabbos, this only applies to Refua that is "Derech haTeva"² and known to be confirmed and tested. [However,] a miraculous method or prayer is not permitted in any circumstance, even if the one praying is a Tzaddik like Rabbi Chanina ben Dosa, and Shabbos cannot be

¹ A note to a Rebbe or Tzaddik asking him to Daven for somebody.

² i.e. scientific as opposed to spiritual or supernatural



desecrated for this even with an Issur de'Rabbanan, and certainly not an Issur de'Oraisa."³.

He proves that this act was forbidden from a Mishna in *Maseches Yoma* (83a). The Mishna discusses whether a person who has been bitten by a rabid dog may eat the dog's liver as a "*Segula*" for his recovery. The *Chachamim* forbid this practice as a dog's liver is not Kosher but *Rabbi Masaya ben Charash* permitted it. The Halacha is in accordance with the *Chachamim*.

Why did the *Chachamim* prohibit it? The *Rambam* (*Peirush Hamishnayos ad. loc.*) explains that one may only violate the Torah's laws to save somebody's life using *Refua* – ordinary medical care. *Segulos* or any other forms of treatment⁴ that are unproven and have no scientific or logical basis cannot override the laws of the Torah.

Why can't we utilize unproven or experimental treatments on the basis of the rule that even "*Safeik Pikuach Nefesh*" overrides the laws of the Torah? One may remove the rubble of a building that has collapsed on Shabbos even if it is uncertain that there are people there or that they are still alive. Why do we not similarly permit experimental treatments in spite of the uncertainty of their effectiveness?

The distinction is obvious: The Torah permits lifesaving acts (such as removing rubble or proven medical treatment) on Shabbos even when it is doubtful that they will save lives in any given actual situation. However, the Torah did not permit acts that may not be legitimate forms of lifesaving at all even if a person is in clear mortal danger.

³ The *Chavatzelos ha'Sharon* (Parshas Korach) cites the *Maharsh"am* (*Shu"t* 3:25) who attests that the Rebbe to whom the "*Kvittel*" was sent, was the Belzer Rebbe (R' Shalom Rokeach, known as the Sar Shalom of Belz) *zt"l*. Allegedly, when the Rebbe received the *Kvittel* he was furious at the desecration of Shabbos. Rav Shlomo Kluger, moreover, had the Rabbi who had permitted it removed from his post and permanently disqualified as a *Dayan*.

⁴ Some argue that the *Rambam* only discounts "*Segulos*" as reason to override the Torah's laws but not other unproven treatments. However, *Rashi* (*ad. loc.*) clearly writes that the *Chachamim* do not allow one to violate the Torah's laws for any unproven treatments. It nonetheless seems clear that according to the *Rambam*, there would be no distinction between *Segulos* and unproven treatments. The *Rambam's* rationale is that a *Segula* can never be considered a proven treatment since it doesn't fit the construct of a treatment being based upon understanding the mechanism of action and ongoing experience and testing to determine its effectiveness.



In practice, however, this is not so simple. The *Magen Avraham* (O.C. 328:2⁵) rules that one may only desecrate Shabbos to treat a person who is dangerously ill using a “*Refua Yedua*” – a known treatment, or “*Al Pi Mumcha*” – a treatment recommended by an expert physician. This means that one may not desecrate Shabbos to use unknown treatments unless they have been recommended by an expert in which case one may assume that they are tried and tested.

The source of his ruling is the *Rema* (Y.D. 155:3) in the name of the *Isur v’Heter* (59). *Biur ha’Gra* (ibid. 23) explains that the source of the *Isur v’Heter’s* ruling is the aforementioned Mishna in *Yoma*, in which the *Chachamim* forbade a person who was bitten by a rabid dog from eating a dog’s liver.

The *Chachmas Adam* (88:7) adds that the same conclusion may be drawn from another Gemara in *Maseches Yoma* (49a) which relates that when *Rabbi Yehoshua ben Levi* was dangerously ill, he refrained from dicing “*Shachalayim*” (a certain vegetable, possibly cress) on Shabbos⁶ because he was unsure whether it was a cure for his illness. Only once he consulted with *Rebbi Chanina* (who was an expert in matters of *Refua*) did he do it.

Why did *Rebbi Yehoshua ben Levi* not dice the *Shachalayim* on the chance that it would cure him? He was, after all, in a situation of *Pikuach Nefesh*. We must say that one may not violate the laws of the Torah unless one is certain that one is making use of a bona fide form of treatment.

The *Pri Megadim* (ibid. *Aishel Avraham* 1) disagrees with the *Magen Avraham*. He maintains that in a case of *Pikuach Nefesh* one is permitted to make use of any form of *Refua* – even if it is untested, as one may override the rules of the Torah even for “*Safeik Pikuach Nefesh*”. He maintains that the *Rema* required a “*Refua Yedua*” in the case of an ordinary sick person, not in a case of *Pikuach Nefesh*. (Many *Acharonim* disagree with the *Pri Megadim* because the source of the *Rema’s* ruling, as mentioned previously, is the *Isur v’Heter* who is clearly discussing a case of *Pikuach Nefesh*⁷.)

⁵ Where the *Mechaber* rules that it is a Mitzvah to desecrate the Shabbos for someone who is dangerously ill

⁶ Because he would have been in contravention of the *Melacha* of *Tochen*.

⁷ He is discussing a disease known as “*Nichpeh*” which is similar to epilepsy and was considered a danger to life.



Regarding the *Pri Megadim's* contention that "*Safeik Pikuach Nefesh*" overrides the laws of the Torah, the *Acharonim* concede that a treatment does not have to be proven to be definitely effective in the disease at hand in order to set aside prohibitions, but it must be relevant to the disease and has been found to have worked in other similar cases, even if it is not certain to be effective. However, we are not permitted to violate prohibitions (whether de'Rabbanan or de'Oraisa) in the course of treatments that are based purely on hearsay and rumor⁸.

It is common for terminally ill patients to be offered the opportunity to participate in a trial of experimental treatments. If the treatment would require the desecration of Shabbos or violation of other prohibitions, would it be permitted? On the one hand, we have seen that many Poskim do not permit the violation of the laws of the Torah for an unproven treatment. However, in most cases, experimental treatments have been heavily researched and tested (*in vitro* and/or *in vivo* in animals or human volunteers) and therefore may already be considered a form of "*Refua Yedua*".

In conclusion, Rabbi Yaakov Emden (the *Ya'avetz*) discusses whether a sick person is obligated to consent to experimental medical therapy (*Mor u'Ketzia* 328). He cites the ruling of the *Magen Avraham* (ibid. 6) in the name of the *Radvaz* that if a doctor says that a person must take a certain medication or else his life will be in danger, we force him to do so. However, this is only true of treatment that is certainly effective ("*Refua Vada'is*") or one recommended by an expert physician. If the patient maintains that the *Refua* in question is unproven and he doesn't wish to desecrate Shabbos in order to receive it, he cannot be forced to take it. This is true even if he bases his judgment on his own opinion (and certainly if another medical authority supports his position)⁹.

However, the *Ya'avetz* contends that this only applies to *Refua* of internal diseases (such as the administration of oral medications) and whose effectiveness cannot be seen. Then, even the doctors are unsure as to the course of *Refua*, and the patient is free to argue that he doesn't believe that the doctor's choice of treatment will be effective. On the other hand, when dealing with external wounds and

⁸ The same is implied by the *Shulchan Aruch haRav* (O.C. 328). See also *Shevet ha'Levi* (3:36 & 5:55) who has a similar approach.

⁹ This is all the more true if he maintains that the medication in question will be harmful, in which case we would not force him to take it even if there were no prohibitions involved.



injuries, doctors can be certain as to the correct and effective course of treatment (such as wound treatment, draining boils, bandaging broken bones or even amputations). In such cases a person can be forced to accept the treatment, even if it desecrates Shabbos, in order to save his life.

It should be pointed out that the *Ya'avetz's* distinction between internal diseases and external wounds is no longer relevant¹⁰. Nowadays when the effectiveness of oral and intravenous medications has been scientifically proven and tested, they are also considered "*Refua Yedua*" and a patient may not refuse them if his life is in danger.)

¹⁰ The *Ya'avetz* died in 1776.