



Switching Shabbos Shifts with Non-Observant Colleagues

"But if her husband shall annul them on the day of his hearing, anything that came out of her mouth regarding her vows or the prohibition upon herself shall not stand; her husband had annulled them and Hashem will forgive her."
(Bamidbar 30:13)

In general, Shabbos-observant doctors attempt to avoid working hospital shifts on Shabbos, and it is not uncommon to attempt to swap a scheduled Shabbos shift with a non-Jewish or non-observant colleague.

This practice raises several Halachic issues for exploration. Working in a hospital on Shabbos inevitably leads to situations of potential *Chilul Shabbos*. Although situations of *Pikuach Nefesh* obviously override the prohibitions of Shabbos, in cases where lives are not at stake, a person must be well versed in Halacha to know what is permitted and what is not. Perhaps an observant doctor who is familiar with *Hilchos Shabbos* and knows how and when to avoid unnecessary *Chilul Shabbos* should refrain from switching shifts with a non-observant colleague who might needlessly desecrate Shabbos?

At first glance, cases of actual *Pikuach Nefesh* would seem to present no such concerns. Since all of *Hilchos Shabbos* are overridden by *Pikuach Nefesh*, why would it make any difference whether the doctor is Shomer Shabbos or not? However, it may not be so simple.

This week's Parsha begins with a discussion of the laws of *Nedarim* (vows). The Halacha is that if a married woman utters a vow, in many circumstances her husband can annul it if he sees fit. What happens if a woman deliberately violates the terms of her *Neder* but, unbeknownst to her, her husband had, in fact, already annulled it – has she committed a sin?

The Gemara in *Maseches Nazir* (23a) derives that she has in fact sinned from the Posuk (above) ***"her husband had annulled them, and Hashem will forgive her"***.



These words imply that despite the fact that she had not violated her vow (for her husband had annulled it), she still requires forgiveness.

The Gemara relates that *Rebbi Akiva* would cry when he read this Posuk. He said, "*if a person who intended to eat pork, but accidentally ate lamb instead (like the woman who intended to sin, but did not technically violate her Neder since it had been annulled), still requires forgiveness, then a person who intended to eat pork and did in fact eat pork (i.e. deliberately committed a sin), all the more so does he require forgiveness for his sin*".

Why would a person require atonement for an act that was not actually prohibited? Is the Torah holding him accountable for his evil intentions? Or does the Torah consider it to be an actual act of sin, even though it was not, strictly speaking, forbidden?

One of the characteristic properties of a *Ma'aseh Issur* (sinful act) is the punishment of *Malkos* (lashes)¹. The *Posuk* that states that "**Hashem will forgive her**" implies that atonement and forgiveness are needed even if the act was not in fact prohibited. However, the Brisker Rav *zt"l* (*Kisvei ha'Griz, Nazir 23a*) deduces from the *Rambam (Hilchos Nedarim 12:18)* that the woman who abrogates a vow that her husband had annulled would have received *Malkos* if not for the *Posuk*! In other words, if the *Torah* had not limited the consequences of her act to **only** atonement and forgiveness, she would have received *Malkos* as though she had actually perpetrated a sin! Why would she be deserving of *Malkos* if the extent of her transgression was only sinful intentions, not a sinful act?

The *Chavatzeles ha'Sharon*² answers that, in fact, according to many *Acharonim*, *Malkos* is not a punishment for performing a *Ma'aseh Issur*, but rather, it is punishment for the "*rebellious intentions to defy the Torah's commands*." Therefore, even if one didn't actually commit a sinful act at all (as in the cases discussed above), his "*rebellious intentions*" may still deserve *Malkos*, if not for the *Posuk* that teaches us not to give *Malkos*!

Tosfos (Piskei Tosfos, Moed Katan 12, 53), in fact, dub a person who intended to sin but unwittingly did not, as an "*Avaryan*" – a sinner. Usually the term *Avaryan*

¹In the case when one violated a *Mitzvas Lo Ta'aseh* (prohibition) and had been properly warned of the consequences by two kosher witnesses

² Rabbi Dovid Menachem Manish Babad of Tarnopol, 1865-1937



would only be applied to a person who *acted* sinfully, not one who merely had sinful intentions. According to the *Acharonim* cited by the *Chavatzeles ha'Sharon*, we can suggest that the reason that a person with these intentions is in fact an *Avaryan*, is because an act that is performed with "*rebellious intentions*" becomes a sinful act in and of itself.

The Gemara in *Kiddushin* (32a) records that *Rav Huna* once wanted to test whether his son *Rabbah* was in control of his temper. He therefore took some expensive clothes that he owned and tore them up. The Gemara asks that by doing so, *Rav Huna* was surely transgressing the prohibition of "*Lifnei Iveir*" (meaning that one may not bring about a situation where another Jewish person is likely to sin) for if his son *Rabbah* would lose his temper, he would likely not treat his father with due respect.

The Gemara answers that *Rav Huna* had already excused any slight to his honor before he tore the clothes. This way, even if *Rabbah* would say something disrespectful in his anger, he would not be sinning.

Tosfos comment that *Rav Huna* must have told *Rabbah* of his intentions before he tore the clothes. For if not, *Rabbah* would have been committing a sin even if *Rav Huna* had excused any slight to his honor for he was not aware that *Rav Huna* had done so. Just as a person who intended to eat pig's meat and unwittingly ate kosher meat has sinned, so too would *Rabbah* have sinned had he acted disrespectfully to his father without realizing that his father had already excused such behavior. *Rav Huna* must, therefore, have informed *Rabbah* of his plans, else he would have transgressed *Lifnei Iveir*.

This comment of *Tosfos* also implies that when a person commits an act that he believes is a sin, it is considered an actual *Ma'aseh Issur*, and not merely evil intentions. It is unlikely that one would transgress *Lifnei Iveir* just for causing another person to have sinful thoughts. Since *Tosfos* had to establish that *Rav Huna* must have informed *Rabbah* about his plans because he was concerned about *Lifnei Iveir* (instead of saying more simply that *Rav Huna* would not have violated the prohibition of *Lifnei Iveir* if *Rabbah* had acted disrespectfully since *Rav Huna* had forgiven any slights to his honor), we must conclude that *Rabbah* would have committed an actual sin if he had gotten angry at his father and not known that *Rav Huna* had excused that behavior.



Let us now return to our original question.

If a person requires medical assistance on Shabbos in a situation of *Pikuach Nefesh*, his primary responsibility is, of course, to find the best available doctor irrespective of his level of Shabbos observance. However, if there are two doctors available who are equally proficient but one is Shabbos observant and the other isn't, would it be preferable to choose the Shomer Shabbos physician?

Rav Shlomo Zalman Auerbach *zt"l* (*Minchas Shlomo* 2:34:35) rules that an observant doctor may not trade his shift on Shabbos with a non-observant doctor. He explains that an observant doctor knows that while it is generally forbidden to perform *Melachos* on Shabbos, in the case of *Pikuach Nefesh* it is actually a great *Mitzva*. However, a non-observant doctor may not know of the *Mitzva* of *Pikuach Nefesh* and deliberately transgress the prohibitions of *Melacha* on Shabbos whether it is *Pikuach Nefesh* or not. Since he "intends" to do a sin (as he is unaware of the *Mitzva* of *Pikuach Nefesh*), he would be considered an "Avaryan" and it is therefore forbidden to trade shifts with him.

The *Shemiras Shabbos keHilchasa* (Chapter 32, footnote 130) cites a similar ruling of Rav Shlomo Zalman: if a person needs to call a doctor on Shabbos and has a choice between an observant physician and a non-observant one, he should preferably call the *Shomer Shabbos* physician who knows that he performs a *Mitzva* with his treatment whereas the non-observant one can be compared to a person who "*intends to sin but is unaware that in fact the act that he is doing is permitted*".

Furthermore, we saw earlier that according to *Tosfos* it would be a violation of *Lifnei Iveir* to place someone in a situation where they believe they are sinning (even though they are not). Accordingly, it might possibly be incumbent upon a person to prevent a non-observant doctor from treating him on Shabbos, even if the situation is one of *Pikuach Nefesh* (provided there is a competent *Shomer Shabbos* doctor available)!

Rav Shlomo Zalman also contended that a doctor who is working to save somebody's life but not for the sake of performing a *Mitzva*, might be motivated by money (his salary). If so, the *Melachos* that he performs on Shabbos, even in order to save somebody's life, may be actual *Chilul Shabbos* and not merely a "*sinful intention to desecrate Shabbos*"!



Why would the doctor's motivation determine whether he may desecrate Shabbos or not? Surely, where *Pikuach Nefesh* is involved, the act of saving lives should be considered a Mitzva regardless of the individual's motivation! It must be that Rav Shlomo Zalman holds that when a person has ulterior motives when saving a life, he is not considered to be performing the Mitzva of *Pikuach Nefesh*. Therefore, if he desecrates Shabbos, it is like any other act of *Chilul Shabbos* and is forbidden.

There is a similar discussion in the Poskim regarding a Jewish person who was R"L physically forced to transgress one of the three cardinal sins (for which a person must give up his life). If he would never have committed this sin of his own volition, he has certainly committed no sin in this instance where he was coerced to do it. However, if he habitually transgresses this prohibition (i.e. without coercion), do we consider him to have "willingly" committed the sin or not when he is coerced? On the one hand, in this instance, he had no choice in the matter. On the other hand, perhaps he should be considered a willing participant in the sin, as he regularly performs this forbidden act.

We must point out that the obvious distinction between these two scenarios. The unscrupulous individual who is forced to commit one of the three cardinal sins, is not truly being forced to act in a manner that is against his will, for he would have done the sin anyway. He therefore isn't really being "forced" and would therefore be considered a "*Ma'aseh Issur*" despite the coercion. However, in cases of *Pikuach Nefesh*, the act of desecrating Shabbos ceases to be a sin at all as *Pikuach Nefesh* overrides the Halachos of Shabbos. On the contrary, the act transforms into a *Mitzva*. Therefore, the intentions or motivation of the person who is treating the patient in these circumstances may be irrelevant as he is performing an act that is objectively a Mitzva³.

When we asked Ha'Gaon Rav Asher Weiss Shlit"a about this issue he told us that it is perfectly permitted for a *Shomer Shabbos* physician to switch his shift with a non-observant doctor on Shabbos. He gave two reasons:

1. Firstly, in his opinion, one does not transgress the prohibition of *Lifnei Iver* when the other person would transgress that same sin on his own volition. For example, if the non-observant doctor would not be working in the

³ However, as we saw above, Rav Shlomo Zalman held that the person's intentions are relevant.



- hospital on Shabbos, he would likely not be keeping Shabbos in his home instead. One therefore has not caused him to desecrate Shabbos by asking that he work in the hospital in one's stead⁴.
2. Secondly, he maintained that if a person is acting to treat a patient in a situation of *Pikuach Nefesh*, his intentions are irrelevant. Since the act he is doing is objectively one of saving lives, it is permitted to perform it on Shabbos regardless of the underlying motivation.

⁴ Rav Moshe Feinstein zt"l (*Igros Moshe O.C. 4:79*) noted that, in fact, it is likely that he will perform fewer *Melachos* in the hospital than he would at home! In the hospital, there are many patients for whom it is permissible or even obligatory to desecrate Shabbos and many of the procedures only violate *Isurey d'Rabanan* whereas in his home, he is likely to violate *Isurey d'Oraysa*.