



## Waiting to Perform *Hefsek Taharah* Following Artificial Insemination

*"Moshe descended from the mountain to the people. He sanctified the people and they washed their clothing. He said to the people, 'Be ready for a three-day period; do not approach a woman.'"*

Shemos 19:14-15

*"Do not approach a woman" – 'for this entire three-day period, so that the women should be able to immerse themselves by the third day and thereby be Tahor to receive the Torah. For if they were to have relations within the three-day period of the giving of the Torah perhaps the woman would discharge Shichvas Zera (semen) after her immersion and become impure again. But once she has waited three days after having relations, the Shichvas Zera has already become putrid and is not fit to fertilize and is pure regarding contaminating the woman who discharges it.'*

*Rashi ad. loc. s.v. 'Al Tigshu'*

One of the basic *Halachos* of *Taharas Hamishpacha* is that a woman who is a must wait at least four or five days after the onset of her menstrual cycle before she may perform a *Hefsek Taharah* and begin counting the *Shivah Nekiym*. The reason for this waiting period is that the *chachamim* were concerned that she may have had relations with her husband on the day preceding the start of her menses. If she were to experience an emission of his *Shichvas Zera* it would cancel her *Shivah Nekiym*. By waiting several days before the *Hefsek Taharah*, any *Shichvas Zera* would no longer be capable of insemination and would not cancel her *Shivah Nekiym*.<sup>1</sup>

This *Halacha* of waiting four or five days before the *Hefsek Taharah* is a unique stringency in *Hilchos Niddah*. Jewish women have taken upon themselves to be exceptionally stringent with regard to this *Halacha* especially in light of the many reasons for leniency:

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<sup>1</sup> The reason that an emission of *Shichvas Zera* would cancel the *Shiva Nekiym* is that Chaza"l (*Talmud Bavli Niddah* 33) consider it analogous to a '*re'iyah*' – a sight (discharge) - of blood. This resembles the law of the *zav* for whom an emission of *shichvas zera* also cancels his *Shiva Nekiym*.



1. The opinion of the Ra'avad and other rishonim is that the emission of *Shichvas Zera* is only a concern with regard to *Taharos* (ritual purity – e.g. *Teruma* – that is not currently practiced). However, with regard to *Taharas Hamishpacha*, this would not be an issue and it would not cancel her *Shivah Nekiyim*.
2. Even according to the other rishonim who disagree with the Ra'avad, a woman should really only need to wait for three days (seventy-two hours) before performing a *Hefsek Taharah*. Nevertheless, the Shulchan Aruch (Y.D. 196:11) rules that four days are required. This is due to a concern that a woman may have had relations with her husband at the beginning of the night preceding the onset of her period. In that case, less than seventy-two hours would have elapsed when the fourth day begins, and an emission of *Shichvas Zera* would cancel *Shivah Nekiyim*. Therefore, a woman must wait four days before performing a *Hefsek Taharah*.
3. The Rema (based on the Terumas HaDeshen) takes that stringency even further, ruling that she must wait five full days before the *Hefsek Taharah*. This is because she may have had relations with her husband during the night but mistakenly think that it was during the day and begin counting a day too early. She must therefore always wait an extra day, just to be sure.<sup>2</sup>

Aside from all of the above, it should be noted that the concern that a woman will emit *Shichvas Zera* should only exist if she actually had relations with her husband on the night before her period began. If, however, she knows that she did not have relations with her husband in the days leading up to her period, she should be allowed to perform a *Hefsek Taharah* and begin her *Shivah Nekiyim* immediately. The Shulchan Aruch in fact appears to rule this way, but the Rema disagrees and says that every woman must wait five days after the onset of her period regardless of how much time had elapsed since the last time she had relations with her husband. The Rema's *psak* is widely accepted as normative halacha, and even the *minhag* of Sefardim today seems to be to follow the Rema in this matter.

There is yet another stringency in that we do not allow a woman to eliminate the waiting period before performing a *Hefsek Taharah* by performing a thorough

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<sup>2</sup>There are even some authorities who required a woman to wait six or even seven days from the onset of her period! This practice is an attempt to emulate the 'seven days of a Niddah' according to Torah law. (See Bach and Taz ad. loc.)



internal cleaning to remove any *Shichvas Zera*. According to many Rishonim, a woman may wash herself or clean the area very thoroughly and then begin counting her *Shivah Nekiyim* immediately. However, the *Gedolei Ashkenaz* forbade this practice arguing that women are no longer adept at doing so adequately.

It is evident from the *poskim* that these stringencies are based upon the customs of righteous Jewish women in earlier generations who took it upon themselves to wait longer than strictly necessary before performing a *Hefsek Taharah* and beginning to count *Shivah Nekiyim* in order to avoid any possible risks or doubts in their *taharah*. The *chachamim* in turn accepted these customs and made them binding.<sup>3</sup>

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One of the possible causes of a couple's infertility is dysfunctional sperm (e.g. abnormal motility) that is unable to reach or penetrate the woman's egg. In order to overcome this, doctors may extract the sperm and insert it directly into the uterus via a catheter in a process known as intrauterine (or artificial) insemination (IUI). If a woman were to undergo this procedure after having already performed the *Hefsek Taharah*, would this cancel the *Shivah Nekiyim*? Do our concerns about possible emission of *Shichvas Zera* following normal relations extend to the case where it was implanted directly via a medical procedure?

Rav Shmuel Vosner *zt"l* (*Shevet Ha'Levi*, 9:183) ruled that indeed, in the case of artificial insemination, a woman's *Shivah Nekiyim* are interrupted. The Rema (cited earlier) ruled that a woman must wait five days to begin her *taharah* even when she had not had relations with her husband. The case of artificial insemination is surely no better than that, especially as there is actual cause for concern since the procedure implants *Shichvas Zera* which may later be emitted.<sup>4</sup>

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<sup>3</sup> This however did not apply to the Minhag (mentioned earlier) to wait seven full days. Regarding that the Rema writes 'there is no reason for the matter. Those who wish to be stringent, may be stringent but those who are lenient will gain in that they will be able to perform the mitzva (of procreation) earlier'. This is also accepted by the consensus of the *Poskim*. Even though the *Acharonim* have found a justification for this practice, it is nonetheless overly stringent to be considered normative *Halachah* and can cause other problems. In addition, as is implied by the Rema, waiting that long may prevent people fulfilling the mitzva of *Pru u'revu* (procreation) because by delaying the ability to go to the *mikvah* for so many days after the period (it works out to be at least two weeks), she may find herself forbidden to her husband on the day that she is ovulating.

<sup>4</sup> Rav Vosner supports his contention by noting that *Chaza"l* equated the emission of *Shichvas Zera* with the discharge of a *Zav*, even though it originated externally from her husband. If so, it should make no



One also cannot contend, argued Rav Wosner, that such a procedure would be considered an 'unusual circumstance' (*milsa d'lo shechicha*) that was not included in *Chazal's* original *Takana*. Since the actual reason for the ruling exists in this case (as mentioned above), we cannot to be lenient in this matter.

In truth there are several circumstances that were considered by the Poskim to be 'unusual' and therefore not included in the law of waiting for four or five days. The *Me'il Tzedaka*<sup>5</sup> ruled that a woman who saw blood immediately following immersion in the *mikvah* (before having had relations with her husband) does not need to wait before performing a *Hefsek Taharah* and restarting her count of *Shivah Nekiyim* since bleeding at that juncture is exceedingly unusual.

Nevertheless, according to Rav Wosner<sup>6</sup>, one may not be lenient in the case of artificial insemination. Since it does introduce *Shichvas Zera* into the woman, we cannot be lenient even if the circumstances are unusual. Only where there is no actual concern of her emitting *Shichvas Zera* (as in the case of the *Me'il Tzedaka*) can we make a distinction between cases that are unusual and cases that aren't.

On the other hand, the *Nishmas Avraham* (196:11) quotes Rav Shlomo Zalman Auerbach *zt"l* as having ruled leniently in this matter. He argued that the law of waiting to begin *Shivah Nekiyim* out of concern for the emission of *Shichvas Zera* only applies when the *Shichvas Zera* is present due to relations with her husband, not artificial insemination. He does however cite several dissenting opinions including Rav Elyashiv, Rav Yehoshua Neuwirth and Rav Ovadia Yosef *zichronam l'vracha*.

As far as Rav Ovadia's position is concerned though, Rav Moshe Paniri quotes him as having agreed with Rav Shlomo Zalman.<sup>7</sup> He bases this on a letter that Rav Ovadia wrote on the 17<sup>th</sup> of Tammuz 5771 to a gynecologist – Dr. Robinson – in which he sided with Rav Shlomo Zalman and supported his position from *Tosfos* in *Maseches Shabbos* (86a) who wrote that the *Halacha* of emission of *Shichvas Zera* canceling *Shivah Nekiyim* applies only in the case of relations and would therefore not apply to artificial insemination.

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difference how the *Shichvas Zera* was implanted as we are concerned only with its discharge and not its origin.

<sup>5</sup> R. Yonah Lansdorfer (1678-1712). This ruling is quoted by the *Sha"ch* (YD 196:23)

<sup>6</sup> Rav Elyashiv *zt"l* also concurred.

<sup>7</sup> *Sefer Avnei Shoham*, p753