

*'And they kept the boys alive'*

## **The Conduct of Medical Practitioners in Cases Where Halacha is at Odds with the Law of the Land**

*'And the midwives feared G-d and they did not do as the king of Egypt spoke to them, and they kept the boys alive'.* Shemos 1:17

The conduct of Shifra and Puah; the Jewish midwives who risked their lives and disobeyed Paroh's orders to kill all of the newborn Jewish boys, is a symbol and inspiration for those who stand for ethical principles in the face of pressure and laws which are improper. The Gemara in Sotah (11b) in fact notes that *'not only did they (Shifra and Puah) not kill the boys; they also took care of their water and their food'* – thus disobeying Paroh further. Following their lead, medical professionals to this day hold themselves to high ethical standards with uncompromising dedication to the sick, aiming to provide them with the best possible care without concern of interference from the outside.

Today a doctor is unlikely to become caught up in differences between his personal ethical positions and the assumptions of professional practice or the law. A religious doctor though is likely in certain cases to expose differences between his obligations in terms of adherence to Torah and Mitzvos and the dictates of the law. In general these differences will rear their head when the secular laws in question are based on liberal values. Such cases give rise to a number of Halachic questions. In this essay, we will discuss several such potential cases<sup>1</sup>:

**Is a fertility specialist obligated to help same-gender couples to become pregnant?** The supreme court of California recently ruled against two doctors who refused to perform artificial fertilization in the case of a couple comprising two women. The doctors claimed that their religious beliefs opposed the idea of couples such as these and that they were particularly opposed to the notion of making it possible for children to become a part of such a family. For that reason, they argued, they ought not be obligated to assist in the

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performing of such procedures. The court however ruled that it was not permitted to distinguish between ordinary couples and couples such as these.

**Is a pharmacist obligated to provide medications that bring about abortion?** In 2007, the state of Washington formulated various rules in the field of pharmaceuticals based on reports of pharmacists who had refused to provide birth control which can potentially lead to abortion when taken in high dosage several days after conception. The pharmacists claimed that the law that obligated them to provide such medications in cases where it is probable that an abortion will be thus abetted, contradicted their rights to freedom of religious expression which opposes abortions. The government however, waved away dismissed these arguments and determined that it was incumbent upon pharmacists to fill out any legal prescription without taking any other matters into account. Moreover, they were not permitted to refer the customers to another pharmacy.

**The field of euthanasia** is also one in which there are differences between one country and another and doctors can encounter problems in this regard. A court in Ontario, Canada for example decided this year that physician-assisted suicide for a person who is deathly ill is a legitimate medical need. Whilst a doctor is not obligated by law to perform the mercy-killing if he is opposed to it for personal reasons, he must nevertheless ensure that the patient will be able to receive the treatment in another place and indeed help him with the arrangements.

These examples and many others give rise to a basic question: How is a doctor to conduct himself in cases where a gulf is revealed between his obligation to adhere to the Mitzvos, and the dictates of the law? Lest we forget, a doctor who flouts the law exposes himself to lawsuits and may even run the risk of losing his license. In the instance of a student doctor the pressure on him is likely to be greater and the scope of his work more limited. Would one say, when taking into account the existence of cases such as those mentioned above (as well as the great challenges with respects to keeping Shabbos particularly within the hospitals outside of Eretz Yisrael), that one ought advise young people not to study medicine with the aim to becoming a practicing doctor?

It is certainly clear that when it is demanded of a doctor to perform acts that are contrary to Halacha, then about those circumstances it was said '*there are no ideas, no knowledge against Hashem*' – he may not act in such a way and must act purely according to Halacha. Likewise it is clear that a doctor should try as hard as he can to avoid problematic

situations as well as attempt to find original solutions in specific cases. That is true in a general sense.

But would we say in light of the Halachic challenges that face a doctor that we should advise young religious people to turn to the study of medicine?

HaGaon Harav Asher Weiss Shlit"a, in a letter to Dr. Aryeh Yehuda Weintraub, noted that significant Halachic challenges exist beyond the realms of the medical profession such as for those that practice law or who are involved in finance. It is clear, he wrote, that one needn't refrain from occupying oneself with these professions because of that. This is all the more true of the medical profession that is so important and worthy.

*We aren't to withdraw our hands from any occupation in which there are Halachic questions thereby leaving the entire world to those who have thrown off the yoke of Heaven. If we were to do so we would each effectively be saying to ourselves 'I will save myself (from sin) and will ignore that which Chazal have taught me that 'all of Yisrael are responsible for one another' (Shavuos 39a).*

*Were we to go down that path," said Rav Weiss, there would not be doctors who fear G-d in our midst. Nor would there be those who try with all their might to save a life or to prevent the loss of life amongst the sick and the elderly and particularly amongst those who only have a short time to live. There would be no nurses from 'the camp who are fearful about the word of G-d' (Chareidim) in the hospitals and who are able to lend a listening ear to the dejection of the sick men and women to whom the outside world is strange and alien. Nor would there be lawyers in our midst who fight for the rights of the Jewish people as sometimes we are taken advantage of by the system that is antithetical to Jewish beliefs. Nobody would be able to fight on our behalf as each person would have already fled the battlefield of the modern world, choosing instead to worry only about himself and his own soul.*

*One further point that we ought take to heart before answering questions such as these is that 'your people Yisrael need a livelihood'. Should we really decree upon all of our children that they are only to become woodchoppers and water carriers before whom there are no Halachic problems and questions? Shall we tell them 'go, stretch out your hands plunder or thievery' or 'go make a livelihood from one another'? The 'fingers-full will surely not satisfy the lion' and 'a pit cannot be refilled with its own clods of earth'!*

*See the extent to which Chazal were concerned (as were all of the Gedolei Yisrael in their respective generations) about the livelihood of human beings. How the Torah itself took pity on the money and possessions of the Jewish people. If we are to decide to distance ourselves from any area in which we have to balance Halachic questions and on occasion rely on leniencies for difficult circumstances... If we are to decide that it is not fitting for the community who are careful in their Mitzva performance to involve themselves with the medical profession, law or finance and suchlike.... We will thereby be decreeing a decree of poverty and difficulty on the wider public as well as a decree of destruction for the Torah world which relies so heavily on the generosity of those of means who love the Torah and who are part of the community of people who 'are fearful of the word of Hashem'.*

*Of course it is obvious that if the occupation being spoken of is one in which one will be forced to contravene even one Mitzva in the Torah then about that it is said 'there are no ideas, no knowledge against Hashem' We would eat dry bread and drink bitter water and sacrifice ourselves rather than disregard even one letter of our holy Torah. But all the while that we have the capacity to judge each relevant matter and decide each Halachic question, and to chart the path on which we may travel to guard the way of the Tree of Life, it is an obligation upon us to uphold this custom, and this is the way we shall go.*

If so, then on the one hand a person should not refrain from occupying himself with medicine and should manage the challenges that arise according to Halacha. On the other hand it is forbidden to perform tasks that are contrary to Halacha. Later we shall focus on evading the question when confronted by patients who request processes forbidden by Halacha.

Is it permitted for a doctor to offer advice relating to acts that are forbidden, or to refer those who seek treatment to other providers? Is it permitted for an anesthetist to participate in a forbidden abortion considering that he not performing the procedure himself?

Regarding the anesthetist's participation in a forbidden abortion Reb Shlomo Zalman Aurbach zt"l ruled (Simman 103) that it is forbidden:

*Regarding his question about whether an anesthetist is obligated to lose his livelihood in order not to participate in an abortion in which there is no definite or possible risk of life to the mother were she to continue the pregnancy:*

*According to those who hold that a Jewish person who kills a fetus is also considered a murderer (a non-Jew who does so is put to death but a Jew isn't) it follows that the anesthetist is very much a partner in crime with the woman and the doctors who are aiming to kill a Jewish soul. This is a very grave matter for there is in fact an obligation to trouble oneself to save the life of a fetus – we even desecrate Shabbos in cases where there is a danger to its life.*

*Even according to the Ramah (Sanhedrin 73a) whose opinion is that one needn't lose money when trying to save a fetus, nevertheless an amount of money that is equal up to one fifth of one's property, one is certainly obligated to spend in rescuing a fetus that is 'captive' in the hands of the woman and surgeon.*

*This should be all the more true regarding the loss that is brought about by being made redundant (which could well not be considered as true loss as the person in question will perhaps find other type of work or work in another place). Therefore in this instance, even though the anesthetist is unable to save the fetus, it is still forbidden for him to cooperate with them.*

*However regarding the question of the doctor who performs ultrasounds for pregnant women and who knows that if he notices a problem in the fetus and sends the results of the test to the doctor who is involved, then that doctor will perform an abortion even without being ratified by Halacha.*

*Such a situation is somewhat unclear for it is no certainty that they will perform an abortion based on his advice. Nevertheless it would be correct to be concerned that he will eventually have aided the killing of the fetus and should therefore refrain from informing the relevant doctor about the problem. Nevertheless he is not obligated to lose his livelihood because of it.*

In the aforementioned letter Rav Weiss Shlit"a argued with Reb Shlomo Zalman Aurbach about this matter:

*Is it permitted to be an anesthetist for the operation that will bring about the abortion of a fetus which is against Halacha or is it perhaps 'Lifney Iveir' ('placing a stumbling block before the blind') or will one be thereby considered somebody who 'abets those who sin'?*



*There is no issue of Lifney Iveir in this case since this is not similar to the case of 'two sides of the river'<sup>2</sup> and it is apparent in Gemara Avoda Zara (6b) that there is no prohibition of Lifney Iveir unless the case is comparable to that of the 'two sides of the river'. And as regards the issue of 'abetting those who sin', I have written a great deal on the topic in Shut Minchas Asher (Volume 2, Simman 28 and 30).*

*In this case it would appear that there would be no issue of abetting those who sin for one or two reasons:*

*1) The anesthetist is not abetting the actual sin (of the abortion). Rather he is occupied with his expertise in anesthesia. The anesthetist anaesthetizes, and the surgeon operates. And even though it is clear that they are acting as a team and each completes the work of the other, nevertheless it would appear that since each of them is occupied in his own job and 'no kingdom touches the other' it follows that this case is markedly different to all of the cases of 'those who abet sinners' that we know of. The cases of 'abetting sinners' very much boarder on 'Lifney Iveir' except that they are defined by being 'on one side of the river' unlike 'Livney Iveir' cases as mentioned above. An example would be the handing of a glass of wine to a Nozir who could have reached it himself had it not been passed to him. In all such cases the person is considered to be 'abetting' as he is the one who hands him the item with which the sin is performed. This is quite unlike our case of the anesthetist.*

*2) In fact one may argue the point even more strongly. The anesthetist is in fact occupying himself with an important Mitzva of helping a sick person and saving him (by ensuring that he cannot feel pain) from the danger of death that accompanies an operation. Which type of operation is being performed and what exactly they will be doing is not his business at all. As far as he is concerned, he is merely preparing the sick person to be able to overcome the danger that is hanging over him owing to the operation. He isn't at all abetting the actual sin that will be wrought through this operation.*

*I know that in the Shut Minchas Shlomo (Volume 3, Simman 103, No. 4) Reb Shlomo Zalman Aurbach wrote that this is forbidden due to the issue of 'abetting those who sin'. Nevertheless as a student who 'rules before his master on the ground' I have written that which appears to me in the paucity of my knowledge.'*

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<sup>2</sup> This refers to the case mentioned by the Gemara of one who provides a Nazir (who is forbidden to drink wine) with a glass of wine. If the wine was formally on a 'different side of the river' to the Nazir, i.e. it was inaccessible to him without the other person's aid, then that person, by handing it to him, has thus 'placed a stumbling block before the blind'.

The opinion of Ha'Gaon Rav Asher Weiss Shlit"a is that one can distinguish between a case where one plays a role in the actual forbidden process and one where one does not do so. Dispatching medical information such as the results of an ultrasound in our case above is one of the routine jobs of a doctor who is determining the condition of the sick person and has no connection with any outcomes that will be caused by that dispatch. It therefore should be permitted.

With regards to offering advice, guidance and referrals to patients for forbidden procedures in a conversation with Rav Weiss, the Rav laid out the following:

Certainly if it is possible to get out of the need to proffer one's help that would be better. But where one is unable to avoid it then perhaps from Heaven they arranged it that specifically a doctor who fears Heaven will be he who will relay the information (in a technical sense) to the patient and who won't try and convince him to perform things that are contrary to Halacha. Rather he will merely convey to him the possibilities that are available to them or perhaps even refer them to other practitioners for the carrying out of these acts.

All the while that he doesn't perform forbidden acts himself it isn't forbidden since in the majority of cases the information that he is conveying to them is readily available and which they could have accessed themselves anyway. He, for his part, does not offer advice as to whether the patient should perform one act more than the other, but merely fulfils their request and regular medical protocol. Ultimately the decision will be in their own hands.