

Halacha Talk by Rabbi Yirmiyahu Kaganoff

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Hatzolah and Shabbos Emergencies

The office of Yated Ne'eman recently received the following letter:

Dear Editor,

“As an active member of Hatzolah, but not speaking on behalf of any specific Hatzolah organization, I suggest that Yated cover a topic that would benefit many frum communities, especially those where, baruch Hashem, new branches of Hatzolah have recently been established, such as Passaic-Clifton, Elizabeth, Baltimore, Waterbury, and overseas. In many instances of our responding to Shabbos emergencies, we discover that the patient, family, and bystanders do not know the basic halachos of pikuach nefesh; thus, they do not understand why we do certain things, such as using our radios or driving to and from an emergency. Although occasionally individual branches follow different protocols (such as whether we drive back from a call) depending on different piskei halacha that each branch received, the basic rules are the same, and the differences in psak halacha among the different branches rarely affect what the patient does.

“Another phenomenon that I see is simply baffling. People call Hatzolah on Shabbos with no intention of allowing us to transport the patient to a hospital if we deem it necessary. They tell us, ‘We can’t go to the hospital; it’s Shabbos.’ Guess what? You called us and it’s Shabbos for us, too. People need to be taught that if, chas veshalom, they need to call Hatzolah on Shabbos (or any other day), they MUST listen to our advice.

“We are trained to recognize problems that are not obvious to the untrained individual. If we say the patient needs to be transported to the hospital on Shabbos, please don’t argue with us!

“My understanding of the halacha is that it is the responsibility of the Rabbonim of a community to educate people about what to do on Shabbos if someone is endangered. It seems that there is no better vehicle to accomplish this than the Yated Ne’eman!

“Thanking you in advance.”

(The Hatzolah volunteer who addressed this letter requested that we withhold his name, and we are honoring his request.)

Although I have never been involved in Hatzolah’s holy work, I would like to introduce my comments with the following tragic story: Yuddie, a hard working, proud Jew in his mid-fifties was feeling unwell on a Shabbos afternoon. His concerned children called the local ambulance service, who felt he should go to the hospital immediately. Yuddie refused to go on Shabbos. To bring the story to its abrupt end, Yuddie died a few hours later from coronary arrest.

This is only part of the tragedy. Imagine what probably happened when Yuddie arrived for final judgment in the court of the Olam HaEmes. Certainly the satan charged him with manslaughter for bringing about his own demise by violating the halachos of pikuach nefesh. Maybe the Beis Din Shel Ma’alah had rachmanus on him and mitigated his crime by judging him as a shogeg, someone negligent in his violation because he was unaware of the halachos. Certainly, Yuddie will receive some punishment for his serious breach of halacha since he should have learned it.

To make sure such tragedies don’t reoccur, we will review the basics of these halachos.

The Gemara teaches, “Someone who was asked a shaylah [whether to desecrate Shabbos in the case of a life-threatening emergency] is disgraced, and the one who asks is guilty of bloodshed” (Yerushalmi, Yoma 8:5). We understand the second part of this statement to mean that someone busying himself with asking whether he can save someone’s life is wasting precious minutes that literally may be the difference between life and death, but why is the rav who was asked the shaylah considered disgraced?

The answer is because he is responsible for teaching these halachos publicly so that people should always know these laws thoroughly. If people are asking what to do, it indicates that the rav has not adequately taught

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these halachos, which is negligence on his part (Korban HaEidah, ad loc).

By the way, this rule obviously applies equally on weekdays! If someone is uncertain whether a particular situation is life-threatening or not, he or she is required to immediately seek proper medical attention.

Delaying might be shedding blood!

Let us quote the words of the Shulchan Aruch: "It is a mitzvah to desecrate Shabbos for a dangerous illness. He who does so swiftly is praised; the person who goes to ask what to do is a shedder of blood!" (Orach Chaim 328:2). And again, "Whoever is swift in desecrating Shabbos in a matter that involves danger is praised" (ibid. 328:13)

IS THIS AN EMERGENCY?

But what if I do not know whether this is a life-threatening emergency? Am I required to be a doctor to know what is and what is not? After all, only a life-threatening emergency supersedes Shabbos!

No, there is no halachic requirement to be a physician. However, this is the rule that one should follow:

"One must desecrate Shabbos even if there is only a slight possibility that the situation is dangerous. One does not need a professional opinion or an expert physician. Whenever one is uncertain whether the situation is dangerous, he is required to desecrate Shabbos" (Shu"t Tashbeitz 1:54).

Thus, Yuddie's children were absolutely correct in calling the emergency service and certainly could have driven him to the hospital themselves, even if it would have turned out to have been nothing but indigestion from too much cholent. Certainly, I have only praise for the Hatzolah volunteers who drive on Shabbos to attend emergencies.

The source for this halacha is the following statement from the Gemara: "An uncertainty whether the situation is life-threatening supersedes Shabbos. Not only if it is an uncertainty whether the situation is immediately dangerous, but even if there is no danger now and the situation may create a danger for the future" (Yoma 84b). The last clause teaches that we violate Shabbos for someone when inferior care received now may affect his future health, such as a person suffering from an apnea condition, which, left untreated, may eventually cause permanent heart damage. The same applies to kidney conditions or diabetes.

In short, the Torah demands that when you are uncertain whether a situation is dangerous or not, be mechallel Shabbos first to get proper medical care, and ask questions later.

Years ago, I was visiting a physician friend of mine when a well-respected member of the frum community, who lived quite a distance from the house, arrived on Shabbos afternoon to determine whether his child's illness was life-threatening. They had just walked with the child forty minutes to have a frum physician evaluate whether the situation warranted chillul Shabbos! To this day I am astonished at how little this yeshiva-educated man knew about pikuach nefesh. When uncertain whether a situation is life-threatening or not, assume that it is until someone knowledgeable informs you that it is not.

WHAT IS CONSIDERED MEDICALLY KNOWLEDGEABLE?

The halachic definition of a physician for these purposes certainly includes a trained Hatzolah emergency medical technician. I can prove this from an anecdote concerning Rav Yaakov Kaminetzky, zt"l. Rav Yaakov's first rabbinic position was in a small Lithuanian village that had no physician, and living there would have violate the psak of the Rambam (Hilchos Deios 4:23) that a talmid chacham may live only in a town that has a physician. Rav Yaakov needed a solution to accept this position and move into the

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community. He resolved the problem by reading through medical books until he felt he had met the halachic requirements of being a local doctor (Reb Yaakov, p. 106). Thus we see that someone who knows enough to treat commonplace medical problems is halachically qualified as a physician.

One can therefore conclude that a Hatzolah volunteer has sufficient training to be considered halachically a physician for the emergencies with which he deals. Therefore, someone who disobeys the instructions of a Hatzolah volunteer to desecrate Shabbos is a shofeich damim!

WHO SHOULD DRIVE — A WOMAN OR A MAN?

If one needs to call Hatzolah, drive a patient to the hospital, or perform some other act of chillul Shabbos in a life-threatening emergency, is it better to have a woman or a man perform the activity?

The most important rule throughout all of the laws of pikuach nefesh is that the situation should be taken care of as swiftly and responsibly as possible. Therefore, whoever can remedy the situation best and quickest should drive (Mishna Berura 328:34). However, the person driving must ensure that no one is endangered. Do not drive at night without lights in an attempt to mitigate the amount of chillul Shabbos, and do not drive recklessly. Unfortunately, I know of people who, in their diligence to limit chillul Shabbos, endangered others in the process. There are many important details germane to someone driving an automobile on Shabbos in pikuach nefesh situations that I will need to discuss in a different article (see Shemiras Shabbos Kehilchasa 40:50-73).

Assuming that either a man or a woman can take care of the emergency equally well, and the person making decisions is level-headed enough to choose without wasting any time at all, it is preferable for a man to be mechallel Shabbos for a life-threatening emergency than for a woman (Shulchan Aruch, Orach Chaim 328:12).

WHY THE MAN?

Chazal were concerned that if a woman was mechallel Shabbos to take care of a life-threatening emergency, she might erringly think that she was asked to desecrate Shabbos because her violating Shabbos (in non-pikuach nefesh circumstances) is not such a severe violation. As a result, they were concerned that she may become lackadaisical in her attitude toward Shabbos (Rambam, Hilchos Shabbos 2:3).

This is simply not true; a woman and a man have the same level of responsibility to observe Shabbos and the same halachos. However, since many less-informed people feel that women are less responsible for observing mitzvos than men are, Chazal emphasized that it is the importance of saving lives that supersedes Shabbos and not the unimportance of her chillul Shabbos. We therefore have a man supersede Shabbos so that the woman does not think she was chosen to be the mechallel Shabbos.

WHO SHOULD DRIVE — A JEW OR A NON-JEW?

Again, the first rule is who will handle the emergency in the most expeditious way. Assuming that either a Jew or a non-Jew is available, the Poskim dispute which is preferable, some contending that one should specifically have an observant Jew do the melacha, whereas others maintain that one should specifically have

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a gentile perform the activity since he is not required to observe Shabbos. Since these two approaches are diametrically opposite, I will present the sources for this dispute.

The Gemara states, “We do not have gentiles perform these matters [being mechallel Shabbos to save lives], only gedolei Yisroel” (Yoma 84b). This Gemara presents us with two different issues that we need to discuss:

1. What does the Gemara mean when it states, “We do not have gentiles perform these matters”?
2. What does it mean when it specifies “only gedolei Yisroel”?

I will address these two halacha questions individually:

What does it mean that we do not have gentiles perform life-saving measures on Shabbos?

Tosafos (Yoma 84b) explains that even if a non-Jew is readily available, one should deliberately have a Jew desecrate Shabbos because Chazal understood that someone who feels accountable for observing Hashem’s commandments executes those mitzvos more diligently.

The Rosh (Yoma 8:14) presents a different reason why we prefer that a Jew perform the melacha — because of concern that people seeing that a gentile was instructed to perform the activity may erringly think that pikuach nefesh is less valuable than Shabbos and in the future may jeopardize someone’s life when a gentile is not available. Alternatively, they may erringly think that one must first try to find a gentile rather than doing whatever is most expeditious. Either mistake may jeopardize someone’s life. To avoid these errors, we deliberately have a Jew perform the activity on Shabbos so that people realize that a life-threatening emergency always supersedes Shabbos.

An interesting dispute results from these differing interpretations. According to Tosafos, even on a weekday one should have an observant Jew perform the life-saving measures (assuming that this does not slow or impede the quality of care), since he performs the work with the added sense that he is performing a mitzvah. However, according to the Rosh, this preference for a Jew is only on Shabbos and not on a weekday when no one will assume that there was a reason one chose a gentile. As mentioned above, this entire dispute is only in a case where no time or care is lost in making the decision whom to send.

Thus far, we have explained two approaches that understand the Gemara’s statement, “We do not have gentiles perform these matters,” to mean that we prefer that a Jew be mechallel Shabbos over a non-Jew. However, the Ohr Zarua (Hilchos Erev Shabbos #38) suggests an alternative approach -- the Gemara does not mean that we deliberately look for a non-Jew to perform these activities. It means that if both a Jew and a gentile are available, one should ask the gentile. Although in his conclusion, the Ohr Zarua disagrees with this approach, and rules that in all instances a Jew should do the work, the Mordechai (Shabbos #467) quotes the Ravyah, who indeed rules that we should not have a Jew perform melacha when a non-Jew is available to do it as swiftly. The Rama records that the Ashkenazic custom follows the Ravyah not to desecrate Shabbos when a gentile is available who will perform the work as swiftly as a Jew would (328:12).

The Taz (328:5) takes very strong exception to this ruling of the Rama and contends that one may not ask a gentile to do the work when an observant Jew is available. Thus we face a dispute between major halachic arbiters as to which of these two approaches to follow: to prefer using a gentile or to prefer using a Jew. As mentioned above, this dispute is only assuming that either one can perform the work equally efficiently and that no delay results.

It is significant to note that the Mishna Berura is inconsistent as to which of these two approaches to follow. In Chapter 328:37, he implies that he follows the Taz’s opinion, whereas in Chapter 278:2, he rules like the Rama, that one should use a gentile when all else is equal. Therefore, this is an unclear halacha. If you are faced with the shaylah, do whatever is expedient without thinking about which is better. You may want to ask your rav for his opinion in order to be prepared for emergencies.

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WHO SHOULD DRIVE —

A NOTED TALMID CHACHAM OR A LAYMAN?

I quoted above the Gemara that specifically states that we should have gedolei Yisroel perform the chillul Shabbos necessary to save lives. What does the Gemara mean when it declares that only gedolei Yisroel should perform the melacha? The Rishonim debate this question, presenting two alternative explanations:

1. Some understand that the Gemara means Jewish adults (Tashbeitz 1:54; Beis Yosef 328 rules that this is the opinion of most Rishonim and poskim).

2. Others explain the term to mean the greatest of the Jewish people, i.e., people we usually call gedolei Yisroel (Rambam, Peirush Hamishnayos, Shabbos end of Chap. 18, and Hilchos Shabbos 2:3).

According to the latter opinion, if a gadol biYisroel is in a place where there is a life-threatening emergency, he should be the one to drive the ambulance to the hospital rather than someone else (assuming he knows how to do so safely and that this will not delay matters) in order to convey to people that what is being done is not because chillul Shabbos is unimportant, but because of the overriding importance of pikuach nefesh! The first opinion contends that it does not make any halachic difference whether a talmid chacham drives the ambulance or any other observant male adult.

The Mishna Berura (328:34) quotes the Rambam's opinion: If there are several people together when a pikuach nefesh matter presents itself, if any one of the people involved can attend to the danger with equal efficiency, the greatest talmid chacham among them should rush to be mechallel Shabbos himself!

A corollary of this halachic point is that a person should not seek to avoid doing melacha on Shabbos when it is necessary and have someone else perform the melacha instead. Quite the contrary, it is meritorious to be the one who performs the melacha.

The Tashbeitz's words are, "The first one who has the opportunity to perform the mitzvah should do so, and receive the reward for saving a Jewish life." I would like to stress that this is true even if it is subsequently discovered that the person was not seriously ill. Since the person who desecrated Shabbos did so according to the Torah's guidelines, he is rewarded as if he saved a Jewish life!

WHAT IF THE SITUATION IS NOT LIFE-THREATENING?

If a medical authority, such as a Hatzolah volunteer, tells you that the situation is not life-threatening, a Jew may not perform any activity that involves violating a Torah prohibition, although depending on circumstances, rabbinic takanos may often be set aside.

It is beyond the scope of this article to detail what one may do under these circumstances, but I will supply two rules of thumb that one should usually follow under these circumstances:

1. If the person is ill (even not seriously) or uncomfortable, one may ask a gentile to do whatever is necessary (Shulchan Aruch, Orach Chaim 307:5).

2. If the patient and his family do not include any talmidei chachamim, and the Hatzolah volunteer tells you that based on his experience of asking shaylos from rabbonim, you should be able to do something yourself, you may rely on this information until one has the opportunity to ask a shaylah about what to do.

May we always merit to perform mitzvos in good health and in the way that Hashem wants us to!

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