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 ב"ר משה גרוסמן זצ"ל

Dedicated in loving memory of
 Harav Yosef Grossman zt"l

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ILL, PREPARED: AVOIDING SOMETHING LIKE THE PLAGUE, PART II

Should a physician get his hands dirty?

Adapted from the writings of Dayan Yitzhak Grossman

In last week's article we discussed the Torah perspective on avoiding illness during an epidemic. We established that, despite some dissenting views, the halachic consensus accepts the fact that disease contagion poses a significant threat to those coming into contact with the infected. The provision of medical care to such individuals can therefore place the provider in danger.

Some *poskim* maintain that one is generally obligated to risk his own life in order to save another from certain danger;¹ others hold that doing so is permissible but not mandatory;² still others maintain that it is improper to do so.³

This dispute notwithstanding, the consensus of contemporary *poskim* is that medical professionals may and should treat patients with contagious illnesses.

Even R' Chaim Palagi,⁴ who argues that a layman who wishes to avoid contact with the plague is being reasonable and prudent, apparently does not object to a physician treating victims of the plague. The question before him was a dispute between a doctor who was treating plague victims and wished to attend davening in shul and the other members of the shul, who wished to bar him entry or at least require a partition between him and them. While Rav Palagi sides with the worried congregants, he apparently has no problem with the doctor's conduct in treating the patients in the first place.⁵

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¹ Hagahos Maimonios (Constantinople ed.) Hilchos Rotzeiach 1:15, cited by Kesef Mishneh ibid. 1:14 and Beis Yosef C.M. 426; Shu"t Devar Eliyahu (Warsaw 5644) 89.

² Shu"t Igros Moshe Y.D. cheilek 2, 174:4 s.v. ulefi hata'am shekasavti

³ Shu"t Radvaz cheilek 3, end of 627 (1052), cited in Pis'chei Teshuvah Y.D.

⁴ 157:15; Cf. Sema ibid. 2; Shu"t Yad Eliyahu (Lublin) 43; Shu"t Maharam Shik Y.D. 155 s.v. um'sh ma'alaso; Ha'amek She'eilah she'ilta 129:4 and she'ilta 147:4; Shu"t Mishneh Halachos (mahadura kama) 6:394.

⁵ Nishmas Kol Chai cheilek 2, Y.D. 49.

⁶ This point appears in Shu"t Tzitz Eliezer cheilek 9, 17:511.



Adapted from a shiur by
 Dayan Daniel Dombroff

PARSHAS KI SISA

Selective Service

Borer (selecting) is one of the 39 forbidden *melachos* of Shabbos, but the Gemara (*Shabbos* 74a) concludes that it is permitted when performed under all three of these conditions:

- **B'Yad** (by hand)—without a utensil
- **Miyad** (for immediate use)—shortly before the meal (*Rama*)
- **Ochel mitoch pesoles** (removing the desired item from the undesired one)—and not vice versa

Why do these conditions permit *borer*? Rashi explains that separating *b'iyad* is considered a significant *shinui*, a change from the norm. This is difficult to understand: In the case of other *melachos*, performing the act in an unusual manner does not permit it entirely, it only downgrades the violation from a Torah prohibition to a Rabbinic one. Why is this one permitted?

The answer is that selecting food just

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Q&A from the
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The Case of the Stroller Bankroller

Q: A relative offered to buy us a certain stroller as a baby gift if we would like it. We researched the model and found that it had certain drawbacks that made it inferior to the top-of-the-line stroller. Although we appreciated the generous offer, we had reason to believe that another relative might buy us the model we had our eye on. We eventually concluded that it was unlikely the other gift would materialize, so we gratefully accepted the bird in hand of the preferred stroller. Not long after we took delivery of the stroller, the other relative did indeed call and offer the superior one as a gift. By then, the faults of the stroller we had already received had begun to gnaw at us. May we accept the second offer and use the first stroller only when the gift giver is around?

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BUSINESS HALACHA, EXT. #1

A: There is a story in the Gemara of two people who agreed to meet for a specific purpose. One party would need to travel a

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Contemporary *poskim* give various arguments for the treatment of contagious patients:

As we saw last week, some early *poskim* are skeptical of the entire doctrine of contagion, and the medical community itself has changed its mind about the contagiousness of certain diseases.¹

The great merit of treating the sick will protect those thus engaged.²

The Torah's commandment to heal the sick includes both contagious as well as noncontagious diseases.³

Because treatment of the sick by medical professionals is normal and customary, and its absence would engender terrible chaos, it is not considered improper self-endangerment.⁴ (A remarkable precedent advanced by R' Eliezer Yehuda Waldenberg for the idea that dangerous conduct is permitted insofar as it is normal and customary is a ruling by R' Meir Eisenstad-

ter (Maharam Ash) permitting voluntary military service even in wartime.⁵) It is permitted to assume some risk in the course of earning one's livelihood.⁶ (Precedents for this include the Noda Bihudah's tolerance of professional—as distinct from recreational—hunting,⁷ and R' Menachem Mendel Krochmal's justification to hiring employees to perform dangerous tasks.⁸)

It appears that our story is quite similar. The relative who asked if the couple want-

ed this particular stroller expected, when they said yes, that they would use it regularly. If they don't, they are causing him to have wasted his money and they would be obliged to reimburse him for this indirect loss.

It would appear that the best way forward would be to stick with the stroller they've got, imperfect though it may be, and enjoy it.

themselves to do their duty even when it entails some low level of risk, and are thus *obligated* to do so.⁹ In a situation of great risk, however, they are not required to endanger themselves, although they may do so if they wish.

R' Shmuel Vosner also rules that it is forbidden for physicians who are able to help the sick to shirk their duty,¹⁰ although he provides no analytical basis for this position beyond the precedent of a letter of R' Akiva Eiger discussing arrangements for attendants at quarantines for Jewish cholera sufferers.¹¹

All agree that when treating contagious patients, all possible means of self-protection should be utilized.

May those who are *moser nefesh* to heal *Klal Yisroel* be protected from all harm.

JUST WHAT THE DOCTOR ORDERED

These arguments merely support the position that medical personnel *may* provide treatment even at risk to themselves, and Rav Waldenberg indeed concludes that it is permitted and a great mitzvah but not necessarily mandatory. R' Yehoshua Neuwirth and R' Avraham-Sofer Abraham, however, go further and argue that because medical professionals understand the risks involved when they accept their positions, they thereby commit

9 Nishmas Avraham (second expanded edition) Y.D. (Vol. 2) 335:8:22 (p. 409). I do not understand this argument; insofar as the risk is deemed significant enough to constitute forbidden self-endangerment, how can a prior commitment override the prohibition? And in any event, this is merely pushing the question back to the legitimacy of the initial decision to accept a job that entails such risk. Why should that itself be permitted if there is foreseeable danger involved?

10 Shu"t Sheivet HaLevi cheilek 8, 251:7 (p. 219).

11 Igros Sofrim, R' Akiva Eiger #30 s.v. gam niten (p. 37).

1 Ibid. osios 1-3

2 Ibid. os 4

3 Ibid. os 7

4 Ibid. os 8

5 Shu"t Imrei Eish 52. Cf. Shu"t Binyan Tzion 137.

6 Tzitz Eliezer ibid. os 9.

7 Shu"t Noda Bihudah mahadura tinyana Y.D. 10.

8 Shu"t Tzemach Tzedek 6. See, however, Shu"t Yad Eliyahu (Lublin) 28 (p. 33a) for a dissenting view.

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before a meal is different from other *melachos* because the food will not exist for much

longer, so the effect of the *melachah* is short lived. By contrast, planting, harvesting, and

cooking have longer-lasting results. Pre-meal *borer* is therefore considered *derech achilah*, a part of the eating process.

One exception to the rule is that the Rama (O.C. 321) permits peeling fruits and vegetables before eating even when removing the *pesoles* from the *ochel*, the peel from the fruit. Because the fruit cannot be accessed

without peeling, that is the *derech achilah*, and the act doesn't have the significance of a *melachah*.

Because most nuts in the U.S. today are sold without shells, some *poskim* maintain that unshelled nuts do not have the status of food in that state, and removing their shells on Shabbos would be forbidden.



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