

THE BAIS HAVAAD HALACHA JOURNAL

Family, Business, and Jewish Life through the Prism of Halacha

VOLUME 5781 • ISSUE XXXV • PARSHAS VAYEIRA

A PUBLICATION OF THE
BAIS HAVAAD HALACHA CENTER

105 River Ave. #301, Lakewood, NJ 08701
1.888.485.VAAD (8223)
www.baishavaad.org
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HaRav Yosef Grossman zt"l



CLEAR AND PRESENT DANGER II

How imminent must a threat be to be considered *pikuach nefesh*?

Adapted from the writings of Dayan Yitzhak Grossman

Our previous article introduced the question posed to R' Asher Weiss by a researcher working to develop a COVID-19 vaccine as to whether he was permitted to work on Shabbos, and we discussed the Noda Bihudah's requirement of *choleh b'faneinu* (a sick person being actually present) in order to apply the dispensation of *pikuach nefesh* (the principle that most halachic prohibitions are set aside in order to preserve life).

THE CHAZON ISH: IT IS DIFFICULT TO MAKE PREDICTIONS

The Chazon Ish cites the Noda Bihudah's standard of *choleh b'faneinu* but proceeds to explain that the question is not whether the situation of *pikuach nefesh* is actually present or merely anticipated in the future, but rather whether the anticipated *pikuach nefesh* is concretely rooted in the present situation, as opposed to being a concern for the future that

"has no connection to the present." He explains that "In truth, we are not proficient in predicting the future. . . and therefore we do not consider remote future possibilities." Like the Noda Bihudah, he argues that if we were to consider any possible eventuality of danger as *pikuach nefesh*, this would nullify all the mitzvos, and we would be permitted, for example, to fashion weapons on Shabbos even during peacetime.¹

Whether the Chazon Ish is actually disagreeing with the Noda Bihudah, and if so, what are the practical ramifications of their disagreement, is not entirely clear. R' Shlomo Zalman Auerbach explains the Chazon Ish to mean that even if there is not an actual *choleh b'faneinu*, if the disease is widespread enough that there is certainly a *choleh* somewhere in the world whom we can help "immediately" by an autopsy, then

¹ Chazon Ish Y.D. siman 208 os 7.



Excerpted and adapted from a shiur by
Dayan Yosef Greenwald

PARSHAS VAYEIRA

SICK VISIT

And Hashem appeared to him in Elonei Mamrei, and he was sitting at the entrance of the tent in the heat of the day.

Bereishis 18:1

According to the Midrash, Hashem visited Avraham following his *bris milah* to perform the mitzvah of *bikur cholim*. Although the Rambam (*Hilchos Avei* 14:1) states that *bikur cholim* is considered a *mitzvah derabanan*, he writes that it also fulfills the *mitzvah d'Oraisa* of loving another Jew (*v'ahavta l'reiacha kamocho*).

The Gemara (Nedarim 39b) explains that *bikur cholim* consists of two different elements: taking care of the patient's physical needs, such as cleaning, food, clothes, and medical care, and the spiritual element, which includes sharing in his suffering and davening for him. In fact, the Ramban states that one who visits the sick but does not daven for him does not fulfill the mitzvah properly.

This spiritual component may also explain why the Gemara (*ibid.*) needs to state that the mitzvah applies even to a prominent person visiting a less prominent one.

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Deal Breaker

Q Reuven agreed verbally with Shimon to establish a joint learning *seder*. Five minutes later, Reuven was approached by Levi—with whom he had studied previously—who asked that Reuven partner with him instead. May Reuven renege on his agreement and study with Levi?

A The first factor to consider is the halacha of *mechusar amanah* (lack of trustworthiness) (see Shulchan Aruch C.M. 204) which dictates that one may not renege on a verbal agreement. However, the Rama cites a *machlokes* concerning a case of *trei tarei*, where the pricing structure of the deal changed, in which case some *poskim* are lenient.

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such an autopsy is permitted.² Similarly, R' Shlomo Zalman is reported to have unequivocally required the autopsy of a child whose condition deteriorated rapidly after receiving a vaccine against viral hepatitis and subsequently died within several hours of receiving the vaccine, due to the need to investigate the possibility of the vaccine having caused the death (perhaps due to a contaminated batch of vaccine). Although this possibility was admittedly remote, it nevertheless justified an autopsy since if established to be the case, it would have had immediate consequences for the safety of other children and for the vaccination policy of the Israeli health ministry.³

R' Asher argues that the question of whether our case of COVID-19 vaccine development, where "most experts believe that it is nearly certain that they will succeed in developing a vaccine," would be considered *pikuach nefesh*, would hinge on the dispute between the Noda Bihudah and the Chasam Sofer on the one hand, and the Chazon Ish on the other. According to the former, it would not, while according to the latter, it would.⁴

R' MOSHE FEINSTEIN: NO OBLIGATION TO STUDY MEDICINE

R' Moshe argues that even if the possibility of saving future sufferers of the disease in question would constitute *pikuach nefesh*, autopsies would still be prohibited, since "There is no obligation incumbent upon a person to learn how to heal. . . the obligation upon a person is merely to save his fellow to the extent that he is able, so that if he is already a physician, there is an obligation upon him to heal his fellows who are sick, and if he is able to swim he is obligated to swim in the river to save someone drowning in the river, but there is no obligation upon a person to learn how to swim and how to heal the sick," and since there is no such obligation, the prohibition of *nivul hameis* (defiling the dead) remains in

force.⁵

R' Moshe invokes the same argument in refutation of the suggestion that the concern for *pikuach nefesh* can justify a kohein attending medical school (and thereby coming into contact with dead bodies in anatomy classes, something normally prohibited to a kohein).⁶ R' Moshe calls this "*shtus v'hevel* (nonsense and folly)," firstly on the basis of the above argument that there is no obligation to study medicine, and therefore no justification for violating a prohibition in order to do so, and secondly on the grounds that there is no lack of physicians in the world.⁷

R' ASHER'S CONCLUSION: WORKING ON SHABBOS WON'T MAKE A DIFFERENCE

After discussing much of the above literature, R' Asher ultimately concludes that the COVID-19 vaccine researcher may not work on Shabbos, because even in the best-case scenario, it will be several months before a vaccine is ready for widespread use, and so it is extremely implausible that the researcher's work on Shabbos will actually save lives. Even dedicated researchers take time off to spend with their families, and human beings cannot work constantly without breaks, so instead of working on Shabbos, the Jewish researcher can work an extra hour or two during the week. The bottom line is that "since we are speaking of a worldwide research effort with multiple foci, and it is impossible to predict when it will conclude, we cannot consider work on Shabbos to be a matter of *pikuach nefesh*, and there is no basis for leniency."⁸

5 Igros Moshe ibid. R' Asher (s.v. Ach lan'd) seems to imply that this is actually what the Noda Bihudah and Chasam Sofer mean. It is quite difficult, however, to read this into their words.

6 The suggestion appeared in a pamphlet of unknown authorship brought to R' Moshe's attention by R' Shimon Schwab. One R' Mordechai Hakohein apparently held this view, and R' Chaim Hirschenson is also cited as invoking *pikuach nefesh*, at least in combination with other arguments, to allow a kohein to attend medical school (see the comments here). Numerous other poskim have discussed the basic question of a kohein attending medical school, and some have ruled leniently based on other arguments; see, e.g., the basic survey of Edward R. Burns "The Study of Medicine by Kohanim" (available here), and the sources cited in his bibliography.

7 Shu"t Igros Moshe Y.D. cheilek 3 siman 155.

8 Cf. Shu"t Minchas Asher cheilek 2 siman 121 (available here), in response to a question from Dr. Bezalel Perl, an emergency room physician at Shaare Zedek Medical Center, as to what he should do regarding krias shema and tefillah in times of "great and incessant stress" in the emergency room. In the course of his response, Rav Weiss rules

2 Nishmas Avraham ibid.

3 R' Mordechai Halperin, Hilchos Pikuach Nefesh MiMishnas shel HaG"R Shlomo Zalman Auerbach ZTZ"l, Hama'ayan, Tamuz 5756.

4 On the general topic of the application of the status of *pikuach nefesh* to situations of anticipated future danger, cf. Amud Hayemini siman 17 os 8 p. 144; R' Chaim Navon, Shiur 8 - Safeik Pikuach Nefesh B'medinyot Tziburit; Olatot-Pikuach Nefesh Asidi.

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Although certain other financial mitzvot do not apply when it is

beneath one's dignity (e.g., returning certain lost objects), the Ahavas Chesed (3:3) explains that the Gemara teaches that *bikur cholim* applies in all cases. This may be due to the

spiritual component, which goes beyond a regular *mitzvah Bein Adam l'Chaveiro* (interpersonal mitzvah).



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Although the Aruch Hashulchan writes that it is *midas chasidus* (a pious act) to be strict, the accepted minhag today seems to be permissive. This would seem to allow Reuven to renege, since he didn't know that Levi would become available.



DAYAN DANIEL
DOMBROFF

However, a *chavrusa* may be different. Since *chavrusos* benefit each other, perhaps they should be considered to have made a *shibud* to each other, similar to an employer and employee. If so, was any *kinyan* (formal acquisition) made that would effect this *shibud*? If there was, perhaps each party is bound by it. Normally, the *has'chalah* (beginning the job) is viewed as the *kinyan* that cements the relationship, but in our case they had not yet begun to study together. Nevertheless, a *kinyan* can be established merely through a *minhag* (customary practice). If so, perhaps in yeshivos, a verbal agreement to study together is considered a binding *kinyan*. But even if so, it is disputed whether even this type of *kinyan* can take effect without a *ma'aseh* (action). Even were we to consider it a *kinyan*, a *po'el* (day laborer) is permitted to quit before the day is done. However, in our case the *chavrusos* are like *shutafim* (partners), since they are obligated to one another, so the allowance for quitting, which is predicated on the fact that we are not slaves to people, may not apply.

There are other issues, beyond what space permits; suffice it to say that backing out may be problematic.

that if he is able to take even a brief break, as he would typically do to get a drink and relax, and he is able to recite krias shema and pray "ikar tefilah," he should do so, but if not, he is certainly exempt. Moreover, if by interrupting his work to pray he will thereby engender any degree of *pikuach nefesh* whatsoever, then it would seem that if he does so, he would not fulfill his obligation of prayer. Great care is therefore required, since if there is a concern of *sakanah*, he should not interrupt his work, but he is able to interrupt it without any concern of *sakanah* whatsoever, he is obligated to do so.

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