

Three Halachic Questions Concerning Male Infertility

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Topic 1: Surgical Anastomosis of the Vas Deferens

Question:

In a case where the patient is infertile due to a blockage in the epididymis or vas deferens (henceforth referred to as the vasa), but whose testes are producing sperm cells, the recommended treatment is to deal with the blocked vas surgically. The operation involves severing the vas on both sides of the blockage and rejoining it. In light of the laws of *petsua dakka*,¹ what is the *halachic* position regarding performing the operation when:

- (a) The operation is to be performed inside the pelvis?
- (b) The operation is to be performed in the scrotum?

Halachic Principles

This question can be divided into two parts:

- (i) Does the ban on *petsua dakka* apply to an operation intended to redress a fault in the reproductive organs?
- (ii) If such a ban applies, can the operation be performed without infringing the law?

Regarding the first question, one can rely on the words of Rabbi Shlomo Luria (Maharshal) in *Yam Shel Shlomo, Yevamot* 88:8, where he writes:

"At all events it appears that a person is only unacceptable when something is severed in order that he should be unable to reproduce, or when severance is essential on account of a disease in his testicles; but it is

¹ A *petsua dakka* – one who has been castrated etc., is normally unacceptable for marriage into the community. It is forbidden to render someone unacceptable in this way.

not for us to impose a ban in a case where, as nowadays, doctors cut on account of a stone or a hernia without destroying the vasa, and (dependent on the skill of the doctors) can make a complete repair with a certainty that he will reproduce. In such a case their children also are legitimate.”

A similar idea is expressed in the responsa *Choshen Ha'ephod* (2:8) quoted by *Nishmat Avraham* (*Even Ha'ezer* 5:4) regarding a baby born with hypospadias² who requires an operation which involves making a temporary hole in the penis. Since the hole is made for the purpose of healing and is to be repaired afterwards, the author sees no reason for it to be forbidden; and he adds that the late Tshubiner Rov agreed with this decision.

Authorities of the present generation have reached the same conclusion. In the responsa *Minchat Yitzchak* (3:108) we find: “The basis of the ban on the destruction of reproductive organs is that such destruction is intended to prevent reproduction. Since here the whole purpose is diametrically opposite, namely to do something that will enable a person to reproduce, there is no ban whatsoever.” The author here also indicated that his in-law wrote likewise in his book *Chelkat Ya'akov* (2:23).

In the responsa *Iggerot Moshe* (*Even Ha'ezer* 4:30) we find similarly: “If this operation were to ensure a complete cure it would certainly be permitted in regard to the ban on castration. Although the surgeon initially cuts part of the vasa in the scrotum, since this is to heal him that he should not be castrated and should be able to reproduce”.

Against this, one must take into account the fact that in this as in any operation there is always a certain risk of failure, in which case the damage done is not temporary but remains permanent. One who studies the sources quoted above carefully will see that permission is given where correction of the fault is fairly certain; this is implied in the words of *Yam Shel Shlomo*.

Further, Rabbi Sh. Kluger, in his responsa *Ha'elef Lecha Shlomo* §24, doubts whether opening a hole in the penis (for the purpose of a hypospadias operation) is considered as “something unacceptable that is restored to a status of being acceptable” and

² Hypospadias – a developmental anomaly in the male in which the urethra opens on the under side of the penis or on the perineum.

writes: "One must consider carefully: if it is something that would return to its original state on its own, or as a result of a cure that could be effected by any ordinary person and is the work of a layman, then this is what is called 'restored to its status of being acceptable.' However, some authorities consider that if it requires a skilled surgeon, and is something that an ordinary person cannot do, then it is not considered as 'restored to its status of being acceptable,' since it is only restored as the result of a surgeon's operation." Rabbi Unterman, in his article at the end of part 1 of *Otsar Haposkim*, reached a conclusion more stringent and not permitting "something that is unacceptable to return to its status of being acceptable" where this can only be achieved by a skilled surgeon.

For this reason it is preferable from the *halachic* aspect to perform the operation inside the pelvis. This is consistent with the decision by *Chazon Ish* (*Even Ha'ezer* 12:7): "As doctors are aware, the vasa originate deep inside the body, pass through an arc and enter the penis, pass through it and flow out. Since neither the Talmud nor the earlier authorities mention the matter, the implication is that in the section of the vasa within the body the ban on *petsua dakka* does not apply, and there is no status of being unacceptable (see Deut. 23:2) unless there is a split in the penis, or the testicles, or their vasa, but not in the inner vas deferens within the body."

Nevertheless, if from a medical aspect it is preferable to operate in the scrotum, one may rely on the decision of Rabbi Moshe Feinstein (*Iggerot Moshe*, *ibid.* §31): "This operation may be performed although the prospect of success is merely 30%, but only by a skilled surgeon who is very precise... since it is important that the join should also be accurate. Although in most cases the join is not good because of the difficulty of the operation, the surgeon may again perform the operation if he considers that this time he may be able to be more precise and produce a more accurate result."

There is no doubt that since this was written, in Nissan 5741 (1981), the success rate in such operations has risen so that in practice one may certainly rely on this decision.

An additional point is the opinion expressed in *Sefer Mitzvot Gadol* (negative laws 119) quoted in the *responsa of Chatam Sofer* (*Even Ha'ezer* 1:17) that nothing that is done as a result of a medical requirement renders a person unacceptable.

Topic 2: A Simple vs. Comprehensive Sperm Test**Question:**

Where a problem of infertility arises and the problem is believed to be with the male and it is decided to perform a spermogram (sperm test), the tests can be made in one of two ways:

- (a) A simple sperm test initially, and a complex one only if necessary.

The advantage is that it costs the patient less, with a possibility that no further tests will be necessary.

The disadvantage is that some of those tested will need to have a larger number of tests requiring additional collection of sperm.

- (b) To start the examination with a comprehensive series of tests on one sperm sample.

Here the advantage is that the number of tests required by some of the patients will be fewer requiring fewer sperm collections.

The disadvantage is the very high cost of comprehensive testing.

What is the correct approach according to *halacha*?

Halachic Principles

The second question deals with a problem that has implications both for the public at large and for the individual: the allocation of limited resources in medicine. In the second part of an article entitled *Emek Halacha* my friend, Dr. A. Steinberg, has considered this problem in depth. The problem can be restated: Is it preferable to devote considerable resources to a few individuals for thorough tests and treatment or to give each individual superficial treatment at a stage where it may be too early to give comprehensive treatment and devote the resources to providing treatment for a larger number of people?

This problem also affects the individual directly. Should he devote considerable resources, most of which will possibly prove to have been unnecessary, in order to examine a problem thoroughly? Or should he be initially satisfied with a more superficial examination, devoting his resources to other needs (such as observing mitzvot etc.) and arrange for further tests if then found necessary.

In the public sphere, the problem can be compared to that of redeeming captives. “Captives are not to be redeemed at a higher cost than is normally demanded, for the sake of society” (b.*Gittin* 45a). Two possible reasons are given for this: “Because an exorbitant price is extortion of the community,” or “so as not to encourage bandits to kidnap people and hold them to ransom.” In the *responsa of Chatam Sofer (Choshen Mishpat 177)* we find the comment that “extorting from the community is included in the category of putting a life at risk.” What is meant is that when considering the limited resources of the community we must take into account its other needs since draining the resources of the community to help one individual can prevent it from meeting the vital needs of others.

This problem is more acute in the matter of sperm tests, which involve emission of sperm which is forbidden when not for its primary purpose (See *Shulchan Aruch, Even Ha'ezer §23*).

In this instance I am inclined to agree with my friend Rabbi Zvi Ben-Ya'akov, who wrote that one should only check common problems. This is by analogy with the laws of *treifa* in slaughtering an animal, where there is no need to check against all eighteen possible types of *treifa* but only against those commonly found (such as adhesion on the lobes of the lung). The reason is that the Rabbis only worried about matters that normally occur, not about unusual things.

Mishkenot Ya'akov (Yoreh De'ah 16-17) gives a criterion: a ten per cent occurrence is considered sufficiently frequent to demand investigation; less than this is considered rare and need not be checked. In our case, therefore, we need to arrange for tests sufficient to cover that which commonly occurs, as explained above.

Obviously if there are symptoms that point in a particular direction, then the situation is different and tests need to be arranged accordingly.

Topic 3: Treating Erectile Dysfunction on Shabbat

Question:

Some young men are sterile as a result of erectile dysfunction (impotence). Today such people can be treated by injecting vaso-active medication into the corpora cavernosa of the penis. Some of

these men need to inject themselves on each occasion before intercourse. May the injection be performed on the Sabbath?³

Halachic Principles

It is first necessary to define the legal status of a man who suffers from impotence. If he is considered as a healthy person overall, then there is no case for dispensation even from a rabbinical ban against violating the Sabbath. However, if his status is that of a person who is “ill but not in danger,” dispensation may be possible. To be more precise, the question is whether the non-functioning of one particular organ of the body is considered as an illness.

We have found in the literature of current authorities that non-functioning of particular organs is considered an illness.

In the responsa of *Tzitz Eliezer* (12:45) we find the problem of a person who has difficulty in speech and who is told by his doctor to do regular breathing exercises every day, including the Sabbath, in order to recover. The author writes: “To my mind it is clear that such a person is considered ill, even though he is in no danger, because he has something wrong with his vocal organs, and a lack of anything that a person needs in order to be complete as a normal person is called illness, whether this is expressed in the form of a headache, pain in arms or legs, or anything similar, or in the form of a defect in any of his organs that prevents it from fulfilling its intended function. We must therefore approach the problem as one of a person who is ill but not in danger”.

Elsewhere (ibid. 11:37) *Tzitz Eliezer* permits a woman who has been ordered to take contraceptive medicine to do so on the Sabbath. *Shemirat Shabbat Kehilchata* has recorded a similar decision (34:19).

In the responsa *Chelkat Ya'akov* the author permits a woman to take fertility drugs on the Sabbath. *Nishmat Avraham* (*Orach Chayyim* 321:2) similarly permits a bride to take medication on the Sabbath to regularize her period before her wedding.

Minchat Yitzchak (1:108) replies to a similar question permitting a person suffering from a weak heart to take medication

³ Relevant issues are the duty to one's wife of intercourse, the duty of reproduction and the rabbinical extension of the ban on pounding ingredients on the Sabbath.

on Friday evening before and after intercourse. Admittedly, *Minchat Yitzchak* is considering a case immediately after the woman has been to the *mikveh*, but *Tzitz Eliezer* (8:15,15:14) comments that the principle does not only apply in that situation. *Be'er Moshe* (1:33:9) gives permission for the same reason.

These responsa deal with a person who has a weak heart, who would not be in any danger if he did not have intercourse, and who is nevertheless allowed to take medication on the Sabbath merely to prevent him from putting himself in a situation where his life might possibly be at risk.

In the light of all this, it is clear that one who suffers from impotence may be considered from a *halachic* point of view as one who is “ill but not in danger” as a result of one of his organs not functioning properly.

Mishna Berura (328:121) states authoritatively that “someone who is ill but not in danger may eat special food on the Sabbath, since it involves no action inherently forbidden on the Sabbath. As for someone who is healthy this is permitted. The rabbinical ban, to prevent the risk of someone pounding ingredients [in order to prepare a medication], applies only to someone who merely has an ache or pain, but was never intended to apply to someone who is really ill.”

Now we may consider the question of injection. In the responsa of *Tzitz Eliezer* (8:15:14:9) Chazon Ish is quoted as having told Dr. Schlesinger that “subcutaneous (as oppose to intravenous) injections may be given on the Sabbath to any patient that the doctor says needs them, even when there is no danger.” However, regarding intravenous injections different versions of the opinion of Chazon Ish have appeared.

Tzitz Eliezer (9:17:2:20) claims that Chazon Ish did not consider this, merely saying that if the injection is not intravenous it is certainly allowed.

However, Rabbi Neuwirth in *Shemirat Shabbat Kehilchata* (chapter 32 note 151) claims that both Rabbi Abramsky and Rabbi Schlesinger told him that they had heard from Chazon Ish that intravenous injections are not allowed (on the Sabbath), since it is necessary to remove a little blood before the injection; this is

forbidden on the grounds that it is in the same category as “threshing”.⁴

In our case, the injections are into the absorbent cavities of the penis, and not into a vein. There is therefore no need to remove a little blood before injecting, and clearly no blood is removed. If, therefore, we may consider the man who suffers from impotence as being “ill but not in danger,” he may be allowed to inject himself within the cavities in order to perform the duties applying to intercourse on Friday night.

Source: **The First international Colloquium on Medicine, Ethics & Jewish Law,**

July 1993, pp. 183-188 (Schlesinger Institute, Jerusalem, 1996)

⁴ See also *Tzitz Eliezer* 10:25.