

Information Sheet: *Diagnosis & Treatment on Shabbat*

How do we define a couple experiencing infertility in the eyes of the halakha? They do not seem to fall into the category of the dangerously ill. Can we say that they are ill, or do they just feel some pain and discomfort, but are not sick?

Overview

The rabbis disagree about the exact status of such a couple. One possible source would be the Torah's description of the matriarch Rachel's pain as an infertile woman "Give me children. For if not, I am dead". From here the Talmud derives the notion that "one who is childless it is as though he is dead". However, even though the Talmud does refer to the infertile person as like the dead, this is more of a psychological definition than a medical one. Psychological pain is also recognized by the halacha. Does the psychological pain of an individual experiencing infertility render such a person ill, by the definition of the Torah?

Some rabbis are of the opinion that the infertile couple are in the category of the slightly ill, as they are not actually suffering from a specific medical disease.ⁱ Others hold that they are considered ill, but their lives are not in danger.ⁱⁱ

This author found that the majority of leading rabbis and poskim that he asked hold that the infertile couple can be defined halachically as having a non-life-threatening conditionⁱⁱⁱ. In light of this it is permissible to undergo certain treatments by a non-Jew on the Sabbath or festivals.

Diagnosis and Treatment on the Sabbath

We now have to examine the potential prohibitions connected with each stage and type of fertility treatment and suggest permissible methods of treatment.

Monitoring Ovulation

One of the initial forms of fertility "treatment" involves monitoring the occurrence and timing of ovulation. This is generally important to improve the likelihood of conception, but is especially important in the case of a woman with a relatively short menstrual cycle or a long menstrual flow, who may be ovulating before she immerses in the mikvah. In such a case, sexual relations will only be resumed after the mikvah and therefore after ovulation, effectively preventing pregnancy.^{iv}

Confirming the time of ovulation is essential in the management of infertility in such circumstances.

All of the recognized methods for monitoring ovulation involve actions which are prohibited on the Sabbath. See the ***Ovulation Testing*** article for halachic solutions.

תהילים קכו:ה "הזרעים בדמעה ברינה יקצרו"
"Those who sow with tears shall reap with joy" Psalms 126:5

Other Tests

Whenever testing can be performed during the week it should be avoided on the Sabbath. Such testing includes semen analysis, hysterosalpinogram, hysteroscopy and laparoscopy. There is rarely a reason to perform any of these tests on the Sabbath and it is therefore forbidden to do so.

Hormone Treatments

Until now we have discussed testing. In many cases the first treatment for infertility involves the oral administration of clomiphene citrate. Even though taking medication is prohibited on the Sabbath,^v most authorities do permit taking these drugs on the Sabbath.^{vi} Additionally, one may tear the wrapping of the medication on the Sabbath, but should be careful not to tear the letters.^{vii} In light of this, it is preferable whenever possible to prepare the tablets before the Sabbath.

Injections

It is permitted for a non-seriously ill person to be given subcutaneous and intramuscular injections on the Sabbath.^{viii} However, these injections do involve rabbinic prohibitions^{ix} and, therefore, it is preferable not to administer injections unless this is absolutely necessary on the Sabbath. The injections used for ovulation induction may be subcutaneous or intramuscular and need to be administered every day. It is preferable to administer them before and after the Sabbath where possible.^x If this is impossible, it is preferable that a non-Jew should give the injection.^{xi} However, in a case where no other possibility exists, the injections may be given by a Jew on the Sabbath. In such cases, it is preferable to affix the needle into the syringe before the Sabbath and to cap the needle to preserve its sterility.^{xii} If this is not feasible, then it may be done on the Sabbath.^{xiii}

One may not use cotton wool dipped in alcohol to clean the site of the injection, as this entails squeezing, which is forbidden on the Sabbath.^{xiv} Instead one should use a pre-prepared alcohol swab of synthetic material.^{xv} Alternatively, one may pour alcohol directly onto the skin and then wipe off the excess with cotton wool.^{xvi}

Chorionic gonadotropin (hCG) injections need to be given at a particular time in order to assure that ovulation occurs at an opportune point thirty-six hours later. In the case where the injection cannot be given before or after the Sabbath, it may be administered on the Sabbath. Again it is preferable that this should be done by a non-Jew, but when this is impossible then even a Jew may do so.^{xvii} The same rules apply regarding fixing the needle in the syringe and cleaning the site of the injection. Receiving an injection on Yom Kippur appears to be permitted and is not considered in the category of eating.^{xviii}

Intrauterine Insemination

Sperm preparation for intrauterine insemination involves a number of actions that are forbidden on the Sabbath. The general running of a laboratory involves the use

of electricity, including turning on the lights, using a microscope etc. The use of a centrifuge for the processing and separation of sperm also requires electricity. As the use of electricity is forbidden on the Sabbath,^{xxix} it is preferable not to undergo such treatment on the Sabbath. Therefore, all attempts should be made by the physician caring for the couple to ensure that they do not have to undergo an IUI on the Sabbath or a Festival.^{xxx} In the course of fertility treatment the hCG injection is administered exactly 35 hours prior to treatment. It should not be given on Thursday evening, as treatment would then be required on the Sabbath. Likewise, it should be avoided in anticipation of a Festival falling out on a weekday.^{xxxi}

In the rare case where treatment has to be performed on the Sabbath, some authorities consider the infertile couple *cholei she'ein bo sakanah* and permit an IUI to be performed by non-Jewish medical staff.^{xxii} Others, who maintain that the infertile couple are not in the category of ill people, would prohibit such a procedure. Therefore, if such a case arises the couple must ask a competent halakhic authority how to proceed. It is preferable, of course, to get this halakhic advice before embarking on treatment, and to direct the physician in charge regarding the halakhic parameters of treatment. With careful planning, such situations can usually be avoided and the treatment can be performed on a weekday. Physicians commonly perform an insemination on two consecutive days to improve the chances of a successful pregnancy. If one of the days is the Sabbath, it may be sufficient to perform the procedure only on Friday, or on Friday and Sunday.^{xxiii} In a case where a rabbi permits the IUI to be performed on the Sabbath then it is not necessary for the couple to request that the non-Jew perform the procedure in a way that would minimize the breaking of the Sabbath, but the non-Jew can perform the action in his regular way.^{xxiv}

There is another problem with undergoing an IUI on the Sabbath. All fertility treatments that involve sperm entering and exiting the laboratory for use in treatment require close rabbinic supervision. Even if the insemination is performed on the Sabbath, the supervisor must still be available to come to the laboratory. In places where the clinic is not near a residential Jewish area, this may create extremely grave, and even insurmountable, difficulties.

In-Vitro Fertilization (IVF)

The laws regarding IVF are similar to those regarding insemination. According to the opinions that the infertile couple are considered as *chole she'ein bo sakanah*, they can directly ask a non-Jew to perform acts on the Sabbath that are forbidden by the Torah in order to undergo IVF treatment. They can also ask a non-Jewish doctor to perform oocyte retrieval.^{xxv} The medical staff is permitted to check the embryos on the Sabbath for signs of fertilization.^{xxvi} The non-Jewish doctor is permitted to perform embryo transfer on the Sabbath if this is absolutely necessary.^{xxvii} Again, care should be taken to ensure proper halakhic supervision of the entire process of IVF, from egg retrieval to fertilization to embryo transfer.

Traveling to the Hospital or Clinic on the Sabbath

In the rare cases, such as in a case of ovarian hyperstimulation syndrome,^{xxviii} where delaying treatment is potentially life-threatening, a woman may travel to the hospital by car on the Sabbath.^{xxix} However, with regard to all other types of fertility treatment that may be permitted on the Sabbath, many authorities do not permit traveling by car.^{xxx} Therefore, it is preferable for the couple to stay within walking distance of the hospital or clinic over the Sabbath or the festival whenever such situations arise.

Some rabbis hold that it is permitted for a non-Jew to drive a woman to hospital on the Sabbath in order to undergo fertility treatment.^{xxxi} Even according to these opinions it is preferable to make this arrangement with the non-Jew before the Sabbath and the non-Jew should open and close the door of the car if this causes the light to turn on and off.

Summary

The laws of Shabbat are intricate and form an integral part of the life of the halakhically committed Jew. However, in cases where life is threatened, these laws are suspended. Many halakhic authorities hold that infertile couples are considered to be non-dangerously ill. It is permitted to ask a non-Jew to perform work on the Sabbath for such a person even when a Torah prohibition is involved. Many authorities therefore some fertility treatments are permitted by many authorities on the Sabbath and Festivals, especially on-going treatment that could not be deferred until after the Sabbath.

Regarding treatment that could effectively be performed on any other day, it would be forbidden even to ask a non-Jewish doctor to perform such treatment. However, in the rare cases where there is no other possibility, some authorities permit treatment to be performed on the Sabbath. Doing so may present additional practical difficulties as the couple and the halakhic supervisor may need to be in close vicinity to the clinic over the Sabbath or the Festival.

We pray that, with the passage of time, God will direct man to find a cure for all ailments, including those of the infertile couple, and that these solutions will not require any compromise of the proper observance of the Sabbath and the festivals^{xxxii}.

ⁱ Responsa Be'er Moshe Volume I:33. I also heard a similar opinion from Rabbi Yehoshua Yeshaya Neuwirth the author of SSK who does not permit any fertility treatment on the Sabbath. He told me that even though he has told many couples to refrain from undergoing any type of treatment on Shabbat they have still eventually conceived. However, see Nishmat Avraham Volume IV Section on Orach Chayim,

page 38 who brings Rabbi Neuwirth's opinion that it is permitted to treat a woman with a sub-functioning uterus on the Sabbath in order to help her conceive if this is totally essential.

Rabbi Dov Lior, the Chief Rabbi of Hevron wrote to me that his original opinion was that the couple cannot be defined as ill, based on the definition that appears in the Aruch HaShulchan, Orach Chayim, 328:19. However after consulting with two leading halachic authorities they suggested that the correct halachic category was indeed "Cholei she'ein bo sakanah."

It is fascinating to note that this debate as to the nature of infertility as a disease has also been a subject for debate within the medical community as well. The reader is referred to a letter that appeared in Fertility and Sterility (August 2000, Volume 74 No. 2 page 398) from Dr. Richard Dickley et al. entitled "Infertility is a symptom, not a disease". There they write

"The facts are that infertility and its frequent companion, anovulation, are not diseases; they are symptoms of underlying, sometimes serious diseases in one or both marital partners. One result of considering infertility and anovulation as diseases rather than as symptoms is that unnecessarily powerful and expensive treatments may be used to obtain an immediate pregnancy, whereas chronic disease that may affect lifelong health is overlooked".

In discussing this letter a well known fertility specialist commented to me that he would prefer the title "Infertility is a condition, not a disease". I believe that this distinction is far from pure semantics but suggests a deep philosophical difference in approach to the reality of infertility and to the infertile couple. If infertility is a symptom of a disease then the task of the doctor is to find the cause and treat the disease, not the infertility itself. If we view infertility as a condition the treatment is causing pregnancy and birth. This itself is the focus of much medical and public debate as to whether infertility specialists are sometimes too quick to offer IVF and other types of treatment instead of searching extensively for the root cause of the infertility. For a popular account of the situation in Israel see the cover article of The Jerusalem Report (July 3, 2000) "IVF Fever."

ⁱⁱ See Chelkat Ya'akov, Orach Chayim 150 in the new edition of this work published by the author's sons (Tel Aviv, 5752) originally published in Volume III, 23. However in another responsa (Yoreh De'ah 62:6 [originally Volume II 6:8]) he claims that they have “at least” the status of feeling slightly ill.

ⁱⁱⁱ Rabbi Mordechai Eliyahu is of this opinion, as is Rabbi Ya'akov Ariel, the Chief Rabbi of Ramat Gan and see note 54 and 56 above. These opinions were given in personal communications.

^{iv} See Allen J. Wilcox Clarice R. Weinberg Donna D. Baird Timing of Sexual Intercourse in Relation to Ovulation, New England Journal of Medicine December 7, 1995 333:23 1517-1521. We could name this “religious infertility” as the cause is the religious requirement of refraining from sexual activity and contact for at least twelve days from the onset of menstruation.

^v See note 44 above.

^{vi} Responsa Chelkat Ya'akov Orach Chayim 150 (see note 57 above) and Responsa Be'er Moshe I 33 who permits taking clomiphene to “boost” ovulation as he holds that such a woman is not ill and therefore this tablet is not considered medication and was not forbidden by the Rabbis.

As clomiphene citrate is taken as a course of treatment over a period of several days it is permitted to take the tablets for someone who previously started this course of treatment, see Birkat Banim 10:3 and note 3 in the name of the Chazon Ish and others, and Rabbi Yigal Shafran *ibid.* p.336.

For a contrary opinion see Birkat Banim *ibid.* note 4 where Rabbi Moshe Feinstein and others permit taking this medication only in an unusual manner. I heard from Rabbi Avraham Shapiro, the previous Chief Rabbi of Israel, that the custom in Jerusalem was to eat tablets with a fork like food and in such a strange manner it was permitted.

^{vii} SSK 33:4. Tearing the letters is considered erasing them, and this is forbidden on the Sabbath. However see *ibid.* note 29 where Rabbi Shlomo Zalman Auerbach permitted tearing letters in the case of a sick person as this is not really considered erasing. One may rely on this only in a case where no other possibility exists, as there he permits it only in the case of a sick person and we have already seen that not all of the authorities agree on the halachic status of the infertile couple.

^{viii} SSK 32:58. With regards intra-venous injections there are opinions that they are forbidden from the Torah as blood needs to be extracted prior to the injection and this is prohibited on the Sabbath. They can only be used in the case of the dangerously ill patient. There are opinions that even intra-venous injections are permitted from the Torah and therefore can be given to a non-seriously ill patient, see Responsa Tzitz Eliezer Vol. VIII 15:12.

^{ix} Such as taking medication on the Sabbath and the possibility that blood will be extracted, but as this is unlikely it is not forbidden by the Torah (as it is not considered a *psik reisha*). Even if the site of the injection does bleed one could argue that it is not forbidden by the Torah as it is not part of the procedure, as opposed to an intra-venous injection where the extraction of blood is an intrinsic part of the procedure. In the case of subcutaneous or intramuscular injections the drawing of blood is considered an unwanted consequence and is permitted, see Birkat Banim 10:19, note 27.

^x Birkat Banim 10:18.

^{xi} I heard this opinion from Rav Mordechai Eliyahu. With regards telling a non-Jew to perform such a task on the Sabbath for a Jew, see SSK 30:11 based on Shulchan Aruch, Orach Chayim 328:17 and the gloss of the Mishnah Berurah ad loc.

^{xii} SSK 33:9 and Birkat Banim 10:19.

^{xiii} *ibid.* See also Responsa Tzitz Eliezer Vol. XV 17 who permits this if the syringe is disposed of immediately after the injection, however see the note (43) in the SSK in the name of the Chazon Ish, that even if the syringe is discarded it is still forbidden.

^{xiv} SSK 33:10.

^{xv} *ibid.* and see note 64 above, also Birkat Banim 10:25 note 41 in the name of Rav Yitzchak Zilberstein that such swabs are also forbidden on the Sabbath and see contrary opinions *ibid.*

^{xvi} *ibid.* One should be careful in this case that the cotton wool should not become so wet as to emit water when lightly squeezed. Several pieces of cotton wool should be used in order to prevent this.

^{xvii} See Techumim XVII p.338, and the reference to Birkat Banim 10:9 note 13 where it appears that Rav Zilberstein does not allow hCG injections to be administered on the Sabbath. In my own discussions with

Rav Zilberstein he related to the infertile couple as non-seriously ill due to their psychological stress and anguish (see note 54 above) and thus it appears that given sub-cutaneous injections where no Torah prohibitions are involved may be performed even by a Jew even in the absence of subjective psychological pain.

^{xviii} This can be deduced from the fact that even one who is not seriously ill can swallow bitter tablets for his health (SSK 39:8). This is because only eating that has some satisfaction is forbidden on Yom Kippur from the Torah (see Rambam, Mishneh Torah, Hilchot Shvitat Asor 2:5 and Mikraei Kodesh, Rabbi Moshe Harari, Jerusalem 5754 9:39 and note 143). Injections are not in this category and therefore are permitted. However, see Responsa Tzitz Eliezer Vol. X 25:22 who does not permit the oral taking of even bitter medicines on Yom Kippur. Even according to the latter opinion we could still argue that injections would be permitted, albeit appropriate to avoid this when at all possible.

^{xix} See SSK 13:1 and note 1 in the name of the Chazon Ish.

^{xx} See Rabbi Shafran, Techumim XVII p. 339 who points out that in Israel generally laboratories are closed on the Sabbath in the same way that most labs are closed in the USA or the UK on Sunday. The doctors time treatment to be convenient with their laboratories schedules and so the case of an IUI falling on the Sabbath should be rare with foresight and careful planning.

This is different from injections on the Sabbath and Festivals as injections are part of an ongoing course of treatment that includes the Sabbath, an IUI is a procedure performed on one (or two) specific day(s). It is generally accepted that one can continue a course of medicine if started before the Sabbath. See Birkat Banim 10:3 and note 3 in the name of the Chazon Ish and others, also Orchot Rabbeinu Kehilat Ya'akov I 214 page 155-156 in the name of the Chazon Ish, and SSK 34:17 and note 76. This is based on Rambam, Mishneh Torah, Hilchot Shabbat 2:2 and Shulchan Aruch, Orach Chayim 328:11.

However, in Igrot Moshe, Orach Chayim III 53, Rav Moshe Feinstein discusses a person who is not ill but is taking medicine, and would usually be forbidden to take such medication on the Sabbath. The question was raised as to whether one can be lenient when it involves a course of medicine over a period of ten days. Rav Feinstein only allows this in extreme circumstances where the discontinuation of the medicine will

lead to serious anguish and even a nervous breakdown. Rav Moshe himself comments there that this is a rare occurrence and in other cases it is forbidden. See also Responsa Be'er Moshe I 33:7 where he brings a proof that one cannot continue a course of medicine even if started several days before the Sabbath.

“Therefore one sees a proof from the Talmud and all of the poskim that this opinion that is accepted by the masses has no halachic basis, rather it is clearly stated to the contrary in the Talmud.”

As previously discussed in the case of the infertile couple there is ground to consider them as ill and therefore they are permitted to take medicine on the Sabbath.

^{xxi} *ibid.* 338.

^{xxii} There is no halachic problem with actually separating the sperm cells or removing the prostoglandins from the semen, as this is not considered separation on the Sabbath. This is because in this case sperm is separated from sperm and in it is permitted to separate such a mixture. See Shulchan Aruch, Orach Chayim 319:3 in the gloss of the Rema and see SSK 3:6. However, note the words of the Mishnah Berurah *ad loc.* note 15. One could argue that in this case the “good” sperm and the “bad” sperm are two different entities, Rabbi Ya’akov Ariel wrote to the author that the different sperm in the semen sample are not considered two different entities and the semen is not regarded as a mixture.

With regards asking a non-Jew to perform forbidden work for a Jew on the Sabbath, there are opinions that one is allowed to tell a non-Jew to perform even a Torah prohibition in order that the Jew can fulfil a mitzvah. See the opinion of the Ba’al HaTtur brought by the Ran at the end of the 19th chapter of Shabbat who allows one to tell a non-Jew to light a candle in order to eat the Sabbath meal. However, Rabbi Moshe Isserlis states that “one should be strict in a place where there is no great need as most of the poskim disagree with this opinion” (Shulchan Aruch, Orach Chayim 276:2 in the gloss of the Rema and see the note of the Mishnah Berurah note 22 that with a mitzvah that can be performed after the Sabbath there is no possibility of being lenient in this matter). The Mishnah Berurah holds that the opinion of the Ba’al HaTtur is still relevant and can be relied upon when a mitzvah for the masses is concerned. See *ad loc.* note 25 where he permits telling the non-Jew to mend the eruv in a place where many Jews would come to carry on

the Sabbath and would transgress the prohibition of carrying, even if the mending of the eruv involved a Torah prohibition.

Therefore, we see that in the case of a mitzvah for the masses it is permitted to tell a non-Jew to perform even a Torah prohibition on the Sabbath.

The Tosafot state that the mitzvah of having children is a great mitzvah. (See Tosafot Baba Batra 13a s.v. “Shene’emar”) Therefore, in the case of this important mitzvah one could also rely on the opinion of the Ba’al HaTur and tell a non-Jew to perform even Torah prohibitions on the Sabbath. Again this is only in the case where such a procedure could not be performed during the week.

The author heard this opinion from Rav Ya’akov Ariel and partly from Rav Yitzchak Zilberstein.

^{xxiii} This is dependant on the actual time of ovulation.

^{xxiv} See SSK 38:4-13 and *ibid.* 30:14 note 46 which establishes that for a rabbinic prohibition it is permissible to tell a non-Jew directly to perform the action on the Sabbath and the operation does not need to be done in an irregular manner.

^{xxv} The woman is not considered as assisting the doctor in this procedure as she is totally passive. The Talmud (Beitzah 22a) discusses a case where a non-Jew applies ointment to an eye on the Sabbath. The Talmud forbids this and the reason given is that the Jew assists the non-Jew by opening and closing his eye. Rabbi Moshe Isserlis permits slight assistance (gloss of the Rema on Shulchan Aruch, Orach Chayim 328:17 and see Mishnah Berurah *ad loc.* note 61 who disagrees). However, in this case the woman has received either local or general anesthetic and does not assist at all.

^{xxvi} The checking itself does not involve any the Sabbath prohibitions and the non-Jew is permitted to turn on the light and the like for his own benefit.

^{xxvii} This is not usually the case and the couple should alert the staff to this consideration before embarking on treatment. Where necessary a day 2 or day 4 transfer would be the treatment of choice.

^{xxviii} See Schenker J, Weinstein D. Ovarian Hyperstimulation Syndrome: A Current Survey, *Fertil Steril* 30:255-268 1978

^{xxxix} This is obvious and see SSK 32:36 and see *ibid.* 40:50-73 with regards the specific laws and considerations when travelling to hospital or for the needs of a dangerous sick person on the Sabbath.

^{xxx} This includes even many poskim who are of the opinion that the infertile couple can be considered as ill. I heard this opinion from Rav Mordechai Eliyahu, Rav Dov Lior and Rav Yitzchak Zilberstein. The latter also raised the point that psychologically it is difficult to tell a person to travel by car on the Sabbath unless it is for *pikuach nefesh*, therefore, this is something that should be avoided where possible.

^{xxxix} In the same way that it is permitted to ask the non-Jew to perform any other forbidden action on the Sabbath even when a Torah prohibition is involved. I heard this opinion from Rabbi Ya'akov Ariel, Rav Ephrayim Greenblatt and Rav Zalman Nechemiah Goldberg.

^{xxxii} We have not discussed here the halachic status of the unborn fetus and the laws of breaking of the Sabbath to save it. See SSK 36:2 where Rav Neuwirt permits transgressing the Sabbath to save the unborn fetus even when this fetus is less than forty days old and see *ibid.* 32 note 13 based on the end of the *Biur Halacha* on *Shulchan Aruch* 330:7 s.v. “O safek”. However, see *Responsa Teshuvot V’Hanhagot* II 182 where Rav Sternboch presents the opinion that one can only break the Sabbath to save a fetus less than forty days old in a case where the danger is certain and not when there is only a *safek*, a possibility of danger. Therefore he did not allow a husband to drive his wife to hospital in a case where his wife’s menstrual period was several days late and the husband raised some concern about the health of the possible fetus. However in this case there are two uncertainties, one it is unclear that the woman is actually pregnant and two the danger is not clear. But in a case of only one *safek*, such as a case where the wife is definitely in the early stages of pregnancy but the danger is not certain, it is not clear whether he would permit the husband to drive to the hospital on the Sabbath.