

Driving Home on Friday for the Observant Physician: Toward a New Mindset

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Case 1: A 76 year old male patient, with a past medical history of hypertension, diabetes, congestive heart failure and a recent stroke, was admitted to the intensive care unit (ICU) for diabetic ketoacidosis on Wednesday. He was stabilized in the ICU, with correction of his acidosis and hyperglycemia, and was transferred to the general medicine floor on Thursday. The plan on Friday morning is to continue providing intravenous hydration to the patient to correct the severe volume depletion, and to continue his insulin therapy. Sundown is 4:15 PM. The Orthodox resident completes his work and is ready to rush home at 3:40 PM, when he gets an urgent page from a nurse that the patient has started clutching his chest and experiencing a significant drop in his oxygen saturation and blood pressure, and a rise in his heart rate. The patient may be having a heart attack or may have thrown a pulmonary embolism, and the resident must now act quickly to diagnose and treat his unstable patient.

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Case 2: An Orthodox senior resident “wrapped up” all of the outstanding issues with her patients and has arranged with her covering resident to meet at 3:30 PM for signout, as sundown is 4:15 PM. The covering resident, however, had rushed to a code blue, and was going to be late for the meeting. On the way back from the code, the resident stopped for a cup of coffee and a snack, and arrived at the call room at 4PM, leaving the Orthodox resident without enough time to properly sign out and return home before the Sabbath begins.

There is a well established moral imperative in Jewish law and tradition that life is of the utmost value.¹ So highly valued is human life that even the Sabbath and Holidays are set aside for treatment of the dangerously ill patient, even if the danger is uncertain.² Not only are there allowances made for the life-saving venture itself, but sources indicate that even returning from such a mission in a manner that violates the Sabbath may be permissible as well. There have been a number of comprehensive articles and responsa in recent years that address the issue of returning home on the

1 I would like to dedicate this article to my parents and in-laws, particularly my father, the original “Dr. Wiesen,” who have all provided models of halakhic precision and academic integrity that I strive to emulate. I sincerely appreciate the sources and guidance provided by Rabbi Howard Apfel MD, and Rabbi Edward Reichman MD, in preparing this article, and the insightful comments of Rabbi Michael Shmidman PhD, Rabbi A. Yehudah Warburg PhD, Dr. Chaim Trachtman, R. Tzvi Sinensky and, most notably, my wife Dr. Shira, in editing this manuscript.

See, for example, *Mishnah Sanhedrin* 4:5, that one who saves a single life is considered as though he has saved the entire world. I thank R. Ari Spiegler for pointing out to me Maimonides’ slightly different formulation in *Mishneh Torah, Sanhedrin* 12:3.

2 *Yoma* 83a, 85a-b.

Sabbath after a life-saving mission had been initiated on the Sabbath.³ Few, however, explicitly address a more common scenario, namely when the life-saving activity occurs before the Sabbath, though late enough on Friday to prevent the physician from returning home before sundown. From experience and observation, it appears that this issue is one which both resident doctors and attending physicians grapple with

3 Briefly, here is a listing of the most relevant sources, many of which will be referenced later in the article. For excellent summations on the subject see: F. Rosner and R.W. Wolfson, “Returning on the Sabbath from a Life-Saving Mission,” *Journal of Halacha and Contemporary Society*, Vol. 9 (Spring 1985): 53-67; J. David Bleich, “Returning From Missions of Mercy on the Sabbath,” *Contemporary Halakhic Problems* Vol. 4: 123-144. Also see R. Yitzchak Liebes, “The Law Applying to the Return from a Life-Saving Endeavor” (“*Be-din Lashuv Limkomam Achar Ma’aseh Ha-Hatzala*”) in M. Hershler, ed., *Halakha U’Refuah* 3:73-85; reprinted in his *Teshuvot Beit Avi*, O.C. 4:16; R. Moshe Feinstein, “If Members of the Ambulance Core Must Arrange Return Transportation with a NonJew” (“*Im Yesh Le-chevrat Hatzala Le-sader Ba-Shabbat She-tehei Hachzara al-yedei Nochri*). *Ibid*: 53-56, reprinted in *Igrot Moshe, Orach Chayim* 4:80; R. Feinstein, “When May Those Who Go Forth on the Sabbath on a Life-Saving Mission Return to Their Site of Origin? *Techumim* 1: 13-23; R. Chaim Pinchas Scheinberg, “Returning From a Life-Saving Mission on Shabbat” in M. Hershler, ed., *Halakha Urefuah* 5:124-133; R. M. Feinstein and Rabbi S.Z. Auerbach, “Returning of Medical Staff by Car on Sabbath After Duty” in Avraham Steinberg, ed., *Emek Halacha* 2:68-88; R. Menachem Waldman, *Techumim* 3: 38-48; R. Mordechai Halpern, “Anyone who Departs May Return to his Original Location?” (“*Kol Ha-Yotz’in Le-Hatzil Chozrin Limkoman*). *Sefer Assia* 4; Halpern, “The Travel of a Doctor Outside of the *Techum* on the Sabbath: Between Private Response and Publication in Print” (“*Nesiyat Rofeh Mi-chutz La-Techum ba-Shabbat – H-avevdel Bein Teshuvah Ishit Le-pirsum Bidfus*), *Sefer Assia* 15:43-49. See also the responses of R. Halpern in *Sefer Assia* 7: 241-249, and *Sefer Assia* 9: 140-147.

Contemporary Responsa include: *Igrot Moshe* above; *Tzitz Eliezer* 11:39-40; *She’eilat Ya’avetz* 1:132; *Har Tzvi*, O.C. 2:10; *Minchat Shlomo* 1:7,8 and 2:29(6); R. Isaac Halevi Herzog, *Ha-Torah VeHamedinah* 5-6: 26-7, reprinted in *Teshuvot Heichal Yitzchak*, O.C., no. 32. Finally, the interested reader is encouraged to listen to audio classes by Rabbi Howard Apfel, MD, on Yutorah.org, at http://www.yutorah.org/lectures/lecture.cfm/742257/Rabbi_Howard_Apfel/Returning_from_a_Pikuach_Nefesh_Situation_on_Shabbos and http://www.yutorah.org/lectures/lecture.cfm/722572/Rabbi_Howard_Apfel/Iyun_in_Medical_Halacha_-_returning_from_the_hospital_on_shabbas, as well as R. Yaakov Neuburger at http://www.yutorah.org/lectures/lecture.cfm/711732/Rabbi_Yaakov_B._Neuburger/Pikuach_Nefesh_&Returning_Home_on_Shabbat.

on a weekly basis, as illustrated by the aforementioned personal anecdotes. While clearly there is no justification for driving on the Sabbath in the second case, the former is one which physicians, particularly resident doctors, encounter often.⁴ This article will attempt to discuss the underlying considerations involved in this common dilemma, as well as the different options available to physicians who find themselves providing emergency medical care on Friday afternoons.

I. Returning from a Life-Saving Mission Initiated on the Sabbath⁵

While most authorities permit the violation of rabbinic prohibitions in returning from a “mission of mercy,” there is disagreement as to whether biblical laws may be set aside as well.⁶ The debate revolves around the application of the Talmudic law that “[the Rabbis] allowed the completion of an action (which is not necessary on a Festival) on account of its beginning (which is necessary for the enjoyment of the festival).”⁷ In context, the rule appears to be a rabbinic enactment specifically allowing a short list of rabbinically prohibited actions. These prohibitions were later permitted in order to prevent certain unforeseen consequences. For example, individuals were permitted to spread the skins of ani-

4 In the second case the physician would be no different than any other traveler stuck late on the eve of the Sabbath. See A. Cohen, “Late for Shabbat,” in *The Journal of Halacha and Contemporary Society*, vol. 42, 5-61.

5 As there have been a number of recent compositions, in both Hebrew and English, which have thoroughly analyzed this topic, I will keep my background remarks on this topic to a minimum. The reader is directed to footnote 3 for a listing of sources. The articles by Dr. Rosner and R. Bleich in particular provide excellent descriptions and analyses of the most prominent considerations in this matter.

6 Driving home involves the Biblical prohibition of *hav'arah*.

7 *Beitzah* 11b. See also *Rosh Hashana* 23b and *Eruvin* 44b-45a, which are crucial to fully understanding the background considerations and decisions.

mals slaughtered on Jewish holidays on the street so that they would be flattened underfoot by passerbys. This had previously been prohibited by a rabbinic injunction. It was discovered, however, that people had become reluctant to slaughter their animals on the holidays for fear of losing the value of the skins (which would become ruined if they could not be flattened immediately). If the animals were not slaughtered, there would not be sufficient meat for the celebratory holiday meals. Thus, it was permitted to smooth skins in this manner on *yom tov* so that people would be willing to slaughter their animals, thereby insuring an adequate supply of meat.

Taken alone, this passage would suggest that in pressing situations the rabbis have the right to annul certain rabbinic prohibitions (*isurim derabanan*), presumably under the auspices of the principle “*hem amru ve-hem amru*,” i.e., the same authority that allows the Rabbis to enact a new edict allows them to repeal it as well.⁸ Similarly, the Talmud in *Rosh Hashana*⁹ states that there was a rabbinic injunction that allowed witnesses to the new moon to travel two thousand cubits from their current location (after travelling to Jerusalem to testify regarding the appearance of the new moon), where ordinarily they would only have 4 cubits. Furthermore, the Talmud continues, midwives who go to assist with a birth and individuals who go to save their friend from fire, captivity, drowning or plague are afforded the same dispensation.¹⁰

8 See R. Shlomo Kluger, *U-vacharta ba-Chaim* 99.

9 *Rosh Hashana* 23b.

10 The allowance of two thousand cubits is likely a rabbinic law, though some believe that it is Bilical in nature. According to R. Akiva it is a Biblical prohibition; see *Chatam Sofer*, *O.C.* 1:203. The mechanism of this injunction is interesting, as it may function through re-establishing their area of residency; see *Ritva*, *Rosh Hashana* 23b, s.v. *hitkin*.

However, there is another Talmudic passage that seems to imply that even biblically prohibited actions (*isurim de'orayta*) may be permitted. The *Mishnah Eruvin* 44b states: “Anyone who departs on a life saving mission may return to his original location,” a journey which would presumably involve the violation of a number of biblical prohibitions.¹¹ Some authorities believe that this is permitted based on the legal mechanism “allowing the completion of an action so as not to prevent its beginning.”¹²

As the Talmudic texts are somewhat ambiguous, halakhic opinion is similarly divided in terms of the degree

11 *Eruvin* 44b-45a. The Talmud continues to qualify this statement as either referring to specific situations which soldiers encounter in battle, or dependent on whether the Jews are in a position of self-government. The first modification, suggested by R. Yehudah in the name of Rav, states that “returning to their original location” is a reference to a decree allowing soldiers to bring their weapons home with them after warding off attackers. After one battle in which it appeared that the enemies were defeated, the Jewish fighters left their weapons in a house near the area where the battle concluded. The enemies, seeing their conquerors disarmed, returned to attack, causing the Jews to suffer many casualties, most self-inflicted. Therefore it was decreed that after every battle, soldiers should return home with their weapons in hand. The second explanation of the intent of the *Mishnah*, proposed by R. Nachman Bar Yitzchak, is that the allowance for those on life saving missions to “return to their original location,” is only when the ruling government is antagonistic to the Jews. (This is how Rashi interprets the Talmud, whereas R. Moshe Feinstein believes the opposite, that they may return home in situations where the government is accommodating to the Jewish people, because then the rescuers will not assume that their activity will take a long time and will want to return home afterwards. See *Igrot Moshe O.C.* 4:80 for complete details of his innovative analysis of this passage.) Both opinions in the Talmud, however, assume that there is a lurking danger for which violations of biblical commandments are permitted – either because enemies might attack the unarmed Jews, or because there was perpetual danger from the ruling government. Thus, there is nothing novel to these allowances, but rather they are extensions of the well-known permission to violate the Sabbath in instances of potential danger (*safek pikuach nefesh*). See also *Shitah Mekubetzet, Beitzab* 11b, “*hiksheh ha-Rashba*.” It should be noted that Ramban there is of the opinion that Biblical violations never are permitted.

12 *Tosafot Rosh Hashana* 23b “*she-yihu*” and *Eruvin* 44b “*kol*,” *Rashba Beitzab* 11b, “*biflugtah*.” These sources imply that all persons engaging in life-saving activities may ignore even Biblical prohibitions on their return journey. See Bleich, p.129.

of activity which is allowed on the return trip from life-saving ventures:¹³

1) Some allow the physician to return home and even violate Biblical prohibitions in doing so, such as driving him or herself home.¹⁴

2) Others only allow one to violate rabbinic prohibitions. This would permit taking a cab or bus home (provided there is a non-Jewish driver).^{15 16}

13 This assumes that the individual will not be called out again for another life-saving mission that Shabbat. If the physician might be called on again to travel to a medical emergency, most opinions would agree that he can return home. See *Shemirat Shabbat ke-Hilchatah* 40:67-71 and Abraham A. *Nishmat Avraham*, O.C., p.172-3, and n. 35, where he quotes both R. Feinstein and R. Auerbach; 329E, p 220. This is also the opinion of R. Nebenzahl in *Sefer Assia* vol. 1 p. 322.

14 *Chatam Sofer* (Responsa 1:203; 5:194; 6:99), R. Yaakov Emden (*She'eilat Ya'avetz*, O.C. 1:132 *s.v. udekashiya*), and R. Moshe Feinstein (see footnote 4 above). R. Feinstein's predominant belief is that one is not allowed a return journey home if the individual departs for the mission assuming that it will take a long time. If, however, it is the type of trip which is typically of a short duration, then one may return home even if it involves the violation of biblical prohibitions. If we were to prevent individuals in the latter case from returning home, that may cause them to be hesitant to attend to such situations in the future. Most medical emergencies would be categorized as requiring only a short time, and therefore the physician would be allowed to return home afterwards, even if it entails violating biblical prohibitions. It should be noted that this is not a blanket *heter*, but rather assumes that the rescuers would otherwise be enticed not to travel to the situation of danger if they would not be allowed to return home after its completion. If, however, physicians are being compensated for their work, or if they are obligated to go because of a scheduled shift, then these authorities would not necessarily allow return trips which violate biblical prohibitions, as they would be required to go even in the absence of the permission to return, and there would be no worry that they would not travel to such missions in the future.

15 R. Shlomo Zalman Auerbach (see n. 4 above and also his article in *Sefer Ha-zikaron Le-Rabbi Shneur Kotler*:123-131, and *Shemirat Shabbat Ke-hilchatah* Vol.1, 40:67-9); R. Abraham (*Nishmat Avraham*, see footnote 13; see also *Nishmat Avraham*, O.C. 329,330:7), R. Waldenberg (*Tzitz Eliezer*, n. 4).

16 R. Tzvi Pesach Frank (*Har Tzvi*, O.C. 2:10) argues that not even rabbinic prohibitions may be set aside for such a return trip. The only allowances made are those situations explicitly mentioned in the Talmud.

II. When the Life-Saving Activity Takes Place on Friday

A priori, one could argue that changing the circumstance so that the life-saving activity takes place on Friday could impact our discussion about returning home in one of two ways:

1) The intuitive position would be that the law would be the same, whether the patient's danger occurred on the Sabbath or immediately preceding it. The psychological and emotional considerations that would have prevented one from performing the abovementioned activities still exist when engaging in life-saving interventions before the Sabbath or holiday begins. One could conceivably hesitate to engage in life-saving activity on Friday if he or she knows that it will mean getting stuck in a hospital, just as one would not slaughter animals late in the day for the holiday if it is clear that it would involve a significant loss of the value of the skins. In order to prevent the avoidance of these important activities, there would still be an institution which allows one to violate certain prohibitions. The fact that, coincidentally, the initial event happens a few minutes before the Sabbath or holiday makes no impact on the overall considerations which led to the allowance of *hitiru sofan mishum techilatan*, i.e., allowing laws to be violated so as to prevent the future avoidance of the initial action. Anyone who has worked in the hospital on Friday understands the stress of getting one's patients taken care of before *Shabbat*, particularly during the winter months when the days are short. Every decision and intervention is taken with a mindfulness of the impending start of

the Sabbath. Thus, psychologically, the concerns that physicians have on Friday are usually resultant from their timely preparations for *Shabbat*. In a very real way, therefore, there is just as much concern for encouraging life-saving activity late on the day on Fridays before the Sabbath as there is on the Sabbath itself.

2) Alternatively, if the allowance to return home is a function of the implementation of “*hitiru sofan mishum techilatan*” (allowing the completion of an action on account of its beginning), then perhaps the mechanism cannot be instituted if there is no “*techilatan*.” In other words, this law requires that a significant “initial event” be a concern on the Sabbath, so as to allow the final event which violates a Sabbath law. Since the initial event did not occur on the Sabbath, the allowance of the “end action” which entails violation of Sabbath prohibitions is not triggered.¹⁷

17 This is the opinion of R. Herschel Schachter in *Be'ikvei Ha-Tzon*, “*Hitiru Sofan Mishum Techilatan*,” p.52, based on R. Akiva Eiger’s comment on the *Magen Avraham*, O.C. 497:18 (who famously states that *hitiru sofan mishum techilatan* only applies to rabbinic prohibitions). It should be noted, however, that R. Akiva Eiger’s discussion centers around the rabbinic law allowing hides to be flattened underfoot so that individuals will continue to slaughter their animals on the holidays. The case in discussion is one in which there was either enough time before the holiday to complete the activity of flattening the skins, or if the initial activity of slaughtering was performed for an external reason, and not for the sake of having meat on *yom tov*. As such, there is no necessity to implement *hitiru sofan mishum techilatan* because the end activity (working the hides) is either irrelevant to the concern for the initial event (i.e. if one is slaughtering his animals anyway for an external consideration without concern of loss of the skins, we need not worry that he will not slaughter his animals on the holiday in the first place!) or could have been performed before the holiday started. In contrast, in the case of missions of mercy, there is a strong connection between the initiation of life-saving activity and becoming stuck on the Sabbath (and conversely a fear that if there is no allowance to return home that the physician would not complete his duties), and there certainly is not sufficient time before the start of the holiday to return home.

III. Toward a New Focus of the Halakhic Concern Regarding Life-Saving Missions on the Sabbath

Until this point our discussion regarding returning from a mission of mercy has focused on the institution of *hitiru sofan mishum techilatan*, and whether this would allow violations of biblical prohibitions or only those of rabbinic nature. If biblical prohibitions could be set aside, then physicians would be allowed to drive themselves home. If only the violation of rabbinic laws would be permitted, then other accommodations or means of transportation would have to be sought out. Perhaps, however, a more global consideration of the issue of returning from life-saving missions, beyond the narrow prism of this institution could shed light on the issue of returning home on *Shabbat* from a medical situation which arose before sundown.¹⁸

The essential component involved in all deliberations regarding life-saving missions on the Sabbath is that which is generally referred to as “*pikuach nefesh*,” the accommodations made by Jewish law in order to encourage potentially life-saving action. As mentioned earlier, Jewish law maintains that the preservation of life is among the principal values in Judaism, and, accordingly, makes allowances in almost all areas of law to insure humanity’s health and well being. Even in cases of remote danger, where there is only a small risk of death, halakha mandates that one violate the Sabbath for a potentially life-saving intervention.¹⁹

Presumably, the allowance to drive home in our case would be included in this mandate, albeit in a more indi-

18 Those opinions that invoke the *Magen Avraham ibid.* in discussions related to our issue clearly believe that the issue exclusively revolves around the application of the rabbinic decree of *hitiru sofan mishum techilatan*.

19 *Yoma* 83a.

rect manner. Perhaps the permissibility of violating even Biblical prohibitions in returning from life-saving activities stems from a concern that failure to allow individuals this leeway now might lead to future instances of *pikuach nefesh*. If a physician is not allowed to return home from a life-saving mission and has to spend a Sabbath in the hospital away from family and religious life, he or she may, in the future, be more reluctant to help in another life-saving mission on the Sabbath. The discomfort of experiencing one Sabbath in the hospital might deter physicians enough that they will think twice before traveling to the ill on a Sabbath, knowing that such a trip may cause them to remain in the hospital for the rest of the Sabbath. This would lead to many cases of *pikuach nefesh*, where a life is in danger but no Jewish physician wants to be there to save it. Even giving doctors the benefit of the doubt and believing that they will not allow issues of personal comfort to interfere with medical care, it is undeniable that at least subconsciously it will have an impact on their decision.²⁰

In recognizing that the decision to sacrifice personal comfort has at least a small impact on one's clinical decision, one may further distinguish between the *law* of *hitiru sofan mishum techilatan* and the *principle* behind it as follows:

The rabbinic *law* offers a blanket allowance of certain actions (i.e., the three specific examples in the Talmud in *Eruvin* 45a) because of the effects that the rabbinic prohibitions had on general society. This is a rabbinic institution which in effect repeals the previous laws which they had instituted, and therefore applies only to their laws, in

²⁰ Please see R. Apfel's audio classes on yutorah.org (also above footnote 3) for further development of this idea.

line with the aforementioned *Magen Avraham* (see footnote 17).

The general **principle**, however, states that halakha is concerned for future ramifications of laws, even if in the present there is no cause for worry. While similar in rationale to the rabbinic law, the underlying logic extends even biblical laws in novel directions.

Perhaps our case of returning home from a life-saving mission on the Sabbath entails a unique and novel confluence of the concern for *pikuach nefesh* and the application of the **principle** of *hitiru sofan mishum techilatan*, where the Rabbis were concerned for future ramifications of current events. This new understanding involves applying the concern of *pikuach nefesh* to activities which are not specifically life-saving, but relate more broadly to the principle of *safek pikuach nefesh*, potential danger to one's life. The compulsion to save lives on the Sabbath would therefore allow even prohibitions which are not necessary in the immediate setting to save an endangered individual, but may in the future prevent a life-threatening situation. Life-saving activities are no longer defined as solely reactive, but can even involve proactive anticipation and avoidance of dangerous situations. Thus, we are implementing the **principle** of *hitiru sofan mishum techilatan*, that our concern is not merely for the current event, but for its implications for later human behavior in the context of *safek pikuach nefesh*, the overriding concern for human life, even in situations where there is only a small fear of danger. In regards to the issue of returning home from life-saving ventures, while allowing one to return home is in no way acutely life-saving, it may ultimately have life-saving impli-

cations if it encourages (or prevents the discouragement of) an Orthodox physician to travel to the next urgent medical situation which arises on the Sabbath. Therefore, it too falls under the rubric of *safeq pikuach nefesh*.

As mentioned earlier, the concern for danger to human life would justify violation of biblical prohibitions, and this ultimately appears to be the justification for allowing such infractions in this case. In fact, a close reading of the sources who permit Biblical laws to be violated indicates that their rationale is often not the application of *bitiru sofam mishum techilatan*, but rather *she-lo le-hachshilan le'atid lavo*,²¹ to prevent them from avoiding the situation (lit. to cause them to stumble) in the future. As opposed to the former, which, as explained above, may represent a rabbinic institution aimed at their own laws, the latter may represent a broader consideration for an individual's well being in the future, which would be compromised if certain allowances were not made in the present, thereby placing the discussion in the realm of *safeq pikuach nefesh*.²²

The *Chatam Sofer*, for one, appears motivated by genuine concern for endangerment of future lives. He states explicitly, "...*de-bitiru sofam mishum techilatam shema lo yeilchu ve-yihiyeh sakanah le-yisraelim* (they allowed the completion on account of the beginning, [out of concern that] perhaps they will not go [in the first place], **and it will be dangerous for the Jews**)."²³ Further, in another responsum²⁴ he applies the rationale of "violate one Sab-

21 *Rosh Hashana* 23b.

22 Hence utilizing the *principle* of *bitiru sofam mishum techilatan*.

23 5:194. Author's emphasis and translation.

24 6:99.

bath so that many more [future] Sabbaths can be observed” to justify the allowance of returning home after life-saving missions, which is itself one of the basic sources suggested in the Talmud²⁵ for the allowance of violating the Sabbath to save a life. Clearly, then, the *Chatam Sofer* believes that the permission to violate the Sabbath granted to individuals returning from missions of mercy is a direct derivation from the fundamental mandate to violate the Sabbath to save lives, and would therefore justify the violation of Biblical prohibitions as well.²⁶

R. Moshe Feinstein, in his landmark discussion of the topic, similarly employs *pikuach nefesh* in justifying the violation of Biblical prohibitions.²⁷ In contrasting the permission granted to witnesses of the new moon (who are also afforded certain leniencies with a similar reasoning²⁸), R. Feinstein states: “[regarding the] concern that perhaps individuals will be hesitant to travel in circumstances of *pikuach nefesh*, even if it is only a small concern, we must be more mindful of it, for we violate the Sabbath [in situations of] life-endangerment even for very small concerns, as stated in the Talmud in *Yoma* 83a.”²⁹ Hence he is directly ascribing the permission to return home to the underlying concern of *safek pikuach nefesh*, where even a very small concern warrants violation of Biblical prohibitions. R. Feinstein uses similar reasoning over the course of his

25 *Yoma* 85b.

26 R. Auerbach believes that the *Chatam Sofer's* dispensation is only for reporting on the new moon, which is *hutrah*, whereas *Shabbat* is *dechuyah* (and we therefore try to minimize violations).

27 *Igrot Moshe*, O.C. 4:80.

28 *Rosh Hashana* 23b.

29 *Igrot Moshe*, *ibid.*, p. 160. Author's translation..

article, using the concern for endangering life in the future as the foundation for his innovative opinion.³⁰

The application of the leniencies related to cases of potential danger (*safek pikuach nefesh*) to driving in return trips on the Sabbath may explain a seeming contradiction in Maimonides' codification of these laws. In the second chapter of the laws of the Sabbath³¹ Rambam rules that those who assist their brethren in dangerous situations may "return along with their weapons to their initial location on the Sabbath so as not to cause them to stumble in the future," implying that one may violate Biblical prohibitions upon returning from a dangerous situation. However, in chapter twenty-seven he states that "anyone who goes out to save...has two thousand cubits from the place of where the rescue took place," implying that one may not violate Biblical prohibitions upon returning from life saving situations, as the rescuer may travel only two thousand cubits and not all the way back to his original location.^{32 33} Most commentaries note this seeming contradiction in the Rambam and understand that his later law is a qualification of the earlier one and that in principle, after a mission of mercy, one may travel only two thousand cubits unless one encounters a situation similar to those de-

30 It should be noted that R. Feinstein's decision was specifically directed towards the members of the Jewish emergency medical responders in *Hatzala*.

31 2:23. Author's translation.

32 27:17. Author's translation.

33 A similar ambiguity appears in the *Shulchan Aruch*, as he codifies the law in two different places with seemingly two distinct conclusions. *O.C.* 407:2-3 seems to indicate that one may only return up to 2,000 cubits, whereas 329:9 states "*kol ha-yotz'im le'hatzil chozrim bichlei zaynam limikomam*," indicating that one may indeed return home after a life-saving mission even while carrying weapons, and the reason given by the *Mishnah Berurah* (*ibid.* 20) is "*she-lo le-hachshilam le'atid lavo*," so as not to cause them to stumble in the future. R. Neuburger addresses this particular point in his audio class (see footnote 3).

scribed in *Eruvin* (i.e., if leaving one's weapons would create a situation of danger or if there is an antagonistic government in power, in which case it would be dangerous to remain in place after battle).³⁴ A close read of the law in chapter two, however, reveals that Maimonides inserts an additional statement that the Talmud does not. Maimonides states, "after they save their brethren they may return along with their weapons to their initial location on the Sabbath, *she-lo le-bachshilan le'atid lavo* (to prevent them from stumbling in the future)." Though Maimonides in these laws tends to quote directly from the Talmudic texts, here he provides a novel synthesis between the rationale of *she-lo le-bachshilan le'atid lavo*, suggested by Raban Gamliel in the passage in *Rosh Hashana*, to the case of returning from heroic missions in tractate *Eruvin*. This crucial addition may explain the permission to return home in chapter two even if it entails the violation of Biblical prohibitions, as it falls within the confines of laws established to prevent potential dangers in the future. Chapter twenty-seven, however, deals with a case where this concern is not applicable.³⁵ There is, therefore,

34 This analysis of *Rambam's* opinion is espoused by *Maggid Mishneh*; *Mirkevet Hamishnah*; *Ma'aseh Rokeach*; *Yad Eitan*, *Sefer ha-Likutim*, *Shabbat* 2:23; *Eliyahu Rabbah* 407:6; R. Shlomo Kluger (above); and R. Eliezer Waldenberg, *Tzitz Eliezer* above, as referenced in Bleich, p. 133. Maimonides' explanation of the *mishna* in *Eruvin* in his *Perush Hamishnayot* also seems to fit with this explanation.

35 R. Feinstein reaches a similar conclusion in reading the *Rambam*, but by distinguishing between the manner in which the soldiers went out to war and to what end they believed they were fighting. In chapter two the soldiers are engaging in a type of war which would not typically last for a long time, and they therefore expect to be home soon. Therefore there is concern that if they are not allowed to return home, they will not go back in subsequent occasions. In chapter 27, however, it is recognized as the type of encounter which could take a long time, and therefore there is no expectation of an early return, and the rescuers cannot return home afterwards. This reading of the two laws allows Maimonides' laws to be taken at face value, without assuming he was vague in his conclusions, or inserting external factors in the two different chapters.

no contradiction in *Rambam's* rulings: when there is concern for potential *pikuach nefesh* in the future, then even Biblical prohibitions may be violated; however, when there is no potential future *pikuach nefesh* (i.e., the rescuers' future behaviors would not potentially be influenced by the allowance of them to return) then only rabbinic laws may be violated.³⁶

If the primary consideration for violating biblical laws on Sabbath is *safek pikuach nefesh*, and that is the primary concern in determining the halakhic allowances in this case, how are we to understand the application by many authorities of the law of *hitiru sofan mishum techilatan* to the question of driving home on the Sabbath? How can a rabbinic institution law have ramifications on biblically mandated ideals? Perhaps, as suggested earlier, it is a reference to the principle behind the law, rather than the actual rabbinic enactment. As such, it is not the rabbinic mechanism undermining biblical prohibitions, but rather the principle of prospective concern which is motivating the implementation of leniencies of *safek pikuach nefesh*. Alternatively, R. Yaakov Emden³⁷ understands that the input of the Rabbis is crucial to the identification of a situation as *safek pikuach nefesh*. The Bible established guidelines for the preservation of life which authorize life-saving action in situations of danger. However, it is up to the Rabbis to determine whether or not there is truly potential danger in a given situation. While the Rabbis do not have the authority to directly allow the violation of *Shabbat*, they do

36 The statement of the *Kesef Mishnah* on 2:23, who explains that the justification for the ruling there (that one can return home so as to prevent them from stumbling in the future) is *safek pikuach nefesh*, would appear to correlate with this explanation.

37 *She'eilat Yavetz*, O.C. 1:132 s.v. *udekashiya*.

wield the right to categorize situations as life-threatening, at which point the mechanisms and allowances of *pikuach nefesh* are implemented. Therefore, Rabbis have the authority to determine that preventing physicians from returning home after a medical crisis may involve potential danger in the future, thereby classifying it under the rubric of *safeik pikuach nefesh*.

IV. Application to Our Case

In removing our initial query from the debate over the rabbinic declaration “allowing the completion of an action on account of its beginning,” and into the realm of the concern for potential danger to life, a new litany of pragmatic considerations come into play. There are specific requirements necessary to identify a situation as *pikuach nefesh* such that the Sabbath can be violated. Specifically, there must be a legitimate and life-threatening medical emergency; it would otherwise not be taken care of adequately by others; and there is no worry of a slippery slope or potential abuse of the allowance. Preserving the Sabbath is of the utmost importance and its violation should never be taken lightly. In reference to our case, an honest, practical assessment of the reality of the situation is warranted to evaluate the true potential influence that the “end” may have on the “beginning.” Authorities can therefore best evaluate what, if any, accommodations need to be made in order to prevent even a small chance of danger.

While physicians constantly decide which situations appear to be critical or life threatening, and when on call, which scenarios require them to leave the comfort of their homes and travel to the hospital, the deliberation is often

different on the Sabbath. It has been my personal experience, and those of my colleagues with whom I have discussed the matter, that getting stuck on Friday and having to walk home, or, worse, being stuck in the hospital the entire Sabbath, is at best uncomfortable, and certainly a prospect which is consciously and carefully avoided. While ideally the physician should block all subjective considerations during the process of clinical evaluation, human nature dictates that individual factors, including physical, emotional and religious, all ultimately weigh in and impact on the decision making process. Hence R. Feinstein's primary concern in his response was whether the individual physician believes that his or her mission of mercy will be brief or drawn out, as subsequent choices as to whether to travel to the hospital may depend on the subjective outcome of the present one.³⁸

This concern is not merely theoretical. R. Bleich concludes his article with a striking report of the medical reality in the Orthodox Jewish community:

But the human condition is hardly immutable. It has been reported that in some areas *Hatzolah* has not been able to enlist sufficient number of volunteers willing to participate on *Shabbat* and *Yom Tov* because wives and families have objected to being deprived of the presence of husbands and fathers for virtually the entire *Shabbat* and *Yom Tov*. The result, it is claimed, is that lives have indeed been lost. Without passing moral and halakhic judgment upon persons who manifest a skewed priority of values, it may be argued, as noted, that under such circumstances all

³⁸ R. Auerbach explicitly denounces the impact that subjective factors may have on the objective clinical decision by the physician in his responsa.

agree that such volunteers may be permitted to drive home if they would otherwise not volunteer for duty on *Shabbat*. *Hatam Sofer's* basic point, *viz.*, that the principle “Better to violate on Sabbath in order to observe many Sabbaths” is sufficiently strong to warrant any infraction which will result in preservation of life.³⁹

The concern that the *Chatam Sofer* and R. Feinstein maintain regarding restrictions on return travel, specifically regarding its potential for causing future life endangerment, is rooted in an honest assessment of human psychology and decision making, and appears to be borne out in practicality. Their insight into the reality of the emotional decisions made on the Sabbath appears to address legitimate pragmatic concerns. By allowing return trips for the physician on the Sabbath, they effectively remove that issue as a consideration, allowing as close to an objective clinical decision as possible. In addressing a fundamental psychological reality, ultimately lives may be saved. Thus, these authorities are addressing “the empirical reality regarding what is necessary in order to save lives.”⁴⁰ Far from ideal, it is an unfortunate concession to human nature.

With this approach there would appear to be no difference if the dangerous situation originated before the start of the Sabbath or on the Sabbath itself. There is certainly

39 Bleich, p.143-4. R. Bleich similarly states: “It may, however, be argued that, at a time and place where it is demonstrably known that inability to return home has resulted in loss of life because would-be rescuers declined to undertake such missions, any action deemed imperative to encourage preservation of life may be sanctioned. Such dispensation would not be rooted in the discussion in *Eruvin* 45a, but in empirical reality regarding what is necessary in order to save lives (p. 141).”

40 Bleich, *ibid.* He further notes that this intervention is specifically not by way of a rabbinic decree, but rather rooted within the mandate of preserving life even at the expense of violating the Sabbath.

reason to believe that an individual would be as likely to be influenced by the start of *Shabbat*, just as he or she would be on the Sabbath itself. As such, not being able to drive home in return on Friday would likely have a similar influence on one's willingness to engage in life-saving activity, and would therefore be subject to the same deliberation as if it had originated on the Sabbath itself.⁴¹

V. Conclusion: Re-thinking the Issue With a New Mindset

It is important to note that just because one **can** rely on the aforementioned leniencies of violating biblical laws while returning home from a life saving mission on undertaken on Friday or the Sabbath, does not mean that one **must** or even **should**. It must be reiterated that many prominent authorities permit only the violation of rabbinic laws as opposed to biblical ones. Further, even if the weight of popular opinion was firmly behind the *Chatam Sofer* and R. Feinstein (who both allow biblical violations to be made), that does not imply that one should not make any and all attempts to minimize violations as the situation allows. In America today it is exceedingly simple to arrange for transportation in a manner which would not involve violating any biblical precepts, and therefore there

⁴¹ From personal experience, I would suggest that a pragmatic assessment of the realities of the hospital would indicate that perhaps one is even more likely to be influenced by the onset of the Sabbath on Friday, than by not being able to return from the hospital when one has departed for the life-saving mission on Saturday. Fridays are often extremely hectic, and the Orthodox physician is often running and harried, trying to complete his or her work with enough time to return home. Conversely, one who is on call from home, and gets called into the hospital, can make a calm and rational assessment of the situation, explain the scenario to his or her family, and proceed calmly into the hospital to take the necessary actions.

may be no need to rely on this leniency. Further, the crux of the *Chatam Sofer's* and R. Feinstein's argument is indeed to prevent individuals from being influenced by the comfort factor of being stuck for the duration of the Sabbath, a consideration which would practically be mitigated in the face of numerous, halakhically valid alternatives (i.e. violations of only rabbinic laws). More importantly, it is the mandate of a physician to remove the personal, subjective considerations from clinical decisions, a directive which should be maintained in the face of personal discomfort in this situation as well. Finally, one must recognize that this allowance is a concession to the human mode of thought, and certainly not an ideal halakhic construct. As R. Bleich observantly notes, "the human condition is hardly immutable."

The principal goal of R. Feinstein's approach is to prevent an Orthodox health care provider from being swayed at all by the fear of being stuck for the duration of the Sabbath. If, in theory, one could completely and convincingly eliminate the external psychological considerations from the equation, then there would be no need for R. Feinstein's leniency. In a certain sense, then, an ideal halakhic construct in this situation is one in which the physician is aware that he or she can rely on the opinion of R. Feinstein as a means of eliminating any external factors aside from his or her objective clinical judgment in making the medical decision, while in practice conceding to the majority opinion and taking a ride home from that very trip. In this halakhic reality, merely knowing that one could rely on R. Feinstein's opinion in extenuating circumstances may be enough to eliminate the concern of external subjective influences causing the clinician to avoid driving to

the hospital in the first place, even if the physician chooses not to avail him or herself of that leniency when the time to depart arrives. Similarly, the physician who is stuck in the hospital on Friday with legitimate medical emergencies should continue with a mindset which eliminates the external considerations. In any event, the complexity of the issue is great and the consequences, in terms of protecting the sanctity of the Sabbath, of the utmost importance. Any action should be taken carefully and thoughtfully, in consultation with appropriate Rabbinic resources.