

SURVEY OF RECENT HALAKHIC PERIODICAL LITERATURE

HYPOSPADIAS AND CIRCUMCISION

In a normal male the urethra, i.e., the canal or passage through which urine is discharged, extends through the entire length of the male organ and opens at the tip of the glans. Hypospadias is a congenital defect of the urethra representing a developmental anomaly characterized by a defect in the wall of the urethra as a result of which the canal does not terminate in an orifice at the tip of the organ but opens instead on the under surface, either at a point close to the glans or elsewhere along the length of the organ or, at times, close to or, infrequently, in the scrotum itself. This is frequently accompanied by either an abbreviated or displaced foreskin which may at times leave the underside of the glans completely exposed and often gives the child the appearance of being partially circumcised. Indeed, *Avnei Nezer, Yoreh De'ah*, II, no. 322, states that at times the tissue which is present may be a mere "flap of skin" rather than a foreskin. If such is the case the tissue need not be removed and indeed such removal would constitute a forbidden act of "*havalah*" unless undertaken for therapeutic purposes.¹ Hypospadias is an anomaly which occurs in approximately one out of every 300 male births. If left untreated, depending upon the location of the orifice, the male may not be able to experience ejaculation in the usual manner in conjunction with sexual intercourse and hence will not be able to sire children. This condition is fre-

quently accompanied by a downward curvature of the penile shaft known as chordee.² A similar, but rarer, congenital anomaly known as epispadias involves termination of the canal in an orifice on the upper surface of the organ.

The earliest description of hypospadias in halakhic literature occurs in *Teshuvot ha-Rosh*, cited by *Bet Yosef, Even ha-Ezer* 5, and *Avnei Nezer, Yoreh De'ah*, II, no. 322. The earliest mention in responsa literature of a remedy for this condition appears in *Teshuvot Hatam Sofer*, VI, no. 64. The remedy described by *Hatam Sofer* as being current in medical practice in his time involved closure of the abnormal congenital opening and surgical construction of an orifice together with extension of the urethra by means of inserting a silver tube.³ The procedure was apparently performed soon after birth. *Hatam Sofer* reports that some rabbinic authorities of his day were led to believe that the anomaly was fatal and would lead to the demise of the child no later than three months subsequent to birth. On the basis of this information those authorities ruled that circumcision should not be performed.

Hatam Sofer takes sharp issue with this position, declaring it to be both medically and halakhically erroneous. *Hatam Sofer* correctly observes that the condition is not fatal. He also adds that even if the anomaly were fatal, circumcision must nevertheless be performed even though the child is afflicted with a fatal defect (as distinct from a child suffering from an illness) provided that the circumcision itself does not increase the degree of danger or

foreshorten life. *Hatam Sofer* reports that he has been informed by a number of physicians that hypospadias presents no medical problem which would contraindicate performance of circumcision in the usual manner.

Contemporary medical practice is to delay repair of hypospadias until the child is approximately three years of age. At that time an epithelial tube is constructed in place of the missing segment of the urethra and the congenital anomalous orifice is closed. Physicians advise against circumcision prior to the time of surgery so that the foreskin will be available for use as a skin flap for transfer in conjunction with the reconstructive plastic surgery necessary for correction of hypospadias. The question of the permissibility of delaying circumcision for this purpose is the subject of an article by a *mohel*, Rabbi Joseph David Weisberg, which appears in a pamphlet entitled *Brit Milah*, published in 5733 by the Falk-Schlesinger Institute of Shaare-Zedek Hospital in Jerusalem under the editorship of Dr. Abraham Steinberg. *No'am*, XVIII (5735-36), 52-60, contains a responsum on the same topic by R. Yitzchak Glickman. Earlier discussions of this question include those of R. Aryeh Leib Grossnass, *Lev Aryeh*, I, no. 41; R. Aaron Burak, *Pirhei Aharon*, I, 182-185; R. Pinchas Mordecai Teitz, *Ha-Pardes*, Nisan 5714; and R. Chaim U. Lipschitz, *Sinai*, LXIII, no. 5-6 (Av-Elul 5728). The most comprehensive treatment of this topic yet to appear is that of R. Ya'akov Breisch, *Helkat Ya'akov* II, nos. 20 and 21, and III nos. 36 and 37.

This question, in terms of its halakhic ramifications, is virtually identical with another question which received extensive treatment in rabbinic responsa.⁴ The latter question involved the circumcision of a child born in 5664 in Poland in the city of Plonsk where R. Zevi Yechezkel Michelson served as rabbi. The problem presented to this authority became the subject of two responsa published in his

Teshuvot Tirosh ve-Yizhar, nos. 97 and 127. Rabbi Michelson writes that he referred the question to R. Abraham Bornstein of Sochaczew, one of the outstanding rabbinic decisors of the day. The latter's response, which is the best known and most widely cited treatment of the question, appears in *Avnei Nezer, Yoreh De'ah*, II, no. 321. Rabbi Michelson apparently also submitted the identical question to a number of other colleagues for their consideration. A number of responsa discussing the selfsame problem appear in the responsa collections of other halakhic authorities.⁵ These responsa are addressed to Rabbi Michelson and those which are dated bear dates in the years 5664 and 5665. The case in question involved a child who was born with a "crooked foot." In order to correct that orthopedic problem the physicians advised placing the foot in a cast. For medical reasons which are not entirely clear the physicians insisted that it would be impossible to correct the orthopedic condition if circumcision were to be performed on the eighth day. Failure to institute corrective measures promptly would have left the child a cripple. In his response *Avnei Nezer*, basing himself upon Rema, *Orah Hayyim* 656:1, unqualifiedly permits postponement of circumcision.⁶ Rema rules that a person need expend no more than twenty percent of his net worth in fulfillment of any given *mitsvah*. The onus of remaining a cripple for life, declares *Avnei Nezer*, is tantamount to expenditure of far more than a fifth of one's possessions and need not be accepted for the sake of a *mitsvah*.⁸ Rabbi Breisch, *Helkat Ya'akov*, II, no. 20, cites *Nedarim* 64b, which speaks of a person who does not have children as being comparable not merely to a cripple, but to one who has died. Since one need not become a cripple for the sake of a *mitsvah*, it follows, *a fortiori*, argues Rabbi Breisch, that for the sake of fulfilling a *mitsvah* one need not accept the prospect of not being able to father children.

It may also be noted that in the case of a child born with hypospadias the question is not of an individual crippling himself for the sake of his own fulfillment of a *mitsvah* but of one person causing another to bear a life-long defect for the sake of the first person's *mitsvah*. Citing *Prashat Drakhim, drush sheni*, who makes a similar point with regard to endangering the life of another, Rabbi Lipschitz points out that the *mitsvah* of circumcision is incumbent upon the father, not upon the eight-day old child. The father clearly has no right to cause the child to be infertile in order for the father to fulfill his own *mitsvah*.⁹ A similar argument is advanced by R. Aryeh Leib Grossnass, *Lev Aryeh*, I, no. 41. Although neither author cites an earlier source, the identical distinction is made by R. Yechezkel Lipschitz, cited in *Teshuvot Tirosh ve-Yizhar*, no. 127.¹⁰

Other authorities require that medical treatment be provided and circumcision delayed for entirely different reasons. R. Yehudah Leib Zirelson, *Teshuvot Azei ha-Levanon*, no. 61, argues that correcting the orthopedic problem in order that the child may have use of the limb constitutes the fulfillment of a positive commandment. *Sanhedrin* 73a declares that the verse "and you shall return it to him" (Deuteronomy 22:2) mandates not only the return of lost property but, *a fortiori*, preservation of life as well. *Azei ha-Levanon* cogently argues that restoration of use of a limb similarly constitutes fulfillment of this *mitsvah*. Citing Ritva, *Sukkah* 25b, he further argues that it is permissible to undertake the performance of a *mitsvah* even if, as a result, it may be impossible to fulfill an even greater *mitsvah* at a subsequent time.¹¹ Accordingly, he rules that it is permissible to apply the cast, even if circumcision is delayed thereby, because correction of the orthopedic condition itself constitutes the fulfillment of a *mitsvah*.

Azei ha-Levanon further argues that failure to provide an available medical

remedy entails a violation both of the commandment "you may not hide yourself" (Deuteronomy 22:3) and the admonition "nor shall you stand idly by the blood of your fellow" (Leviticus 19:16). Rambam, *Hilkhot Rozeah*, 1:13, *Sefer ha-Hinnukh*, no. 237; and *Shulhan Arukh, Hoshen Mishpat* 426:1, basing themselves upon *Sifra, Kedoshim* 41, view those commandments as encompassing an obligation to prevent not only loss of life but also to prevent financial loss from befalling one's fellow.¹² If so, argues *Azei ha-Levanon*, it is similarly forbidden to allow a person to suffer loss of the use of a limb. Circumcision under such circumstances, concludes *Azei ha-Levanon*, would constitute a violation of these two negative commandments. This latter argument is applicable with regard to the circumcision of a child suffering from hypospadias. Although, chronologically, the *mitsvah* of circumcision on the eighth day following the birth of a child presents itself prior to the opportunity for therapeutic remedy of this anomaly, performance of *milah* effectively makes it impossible to correct the condition at a subsequent time. Thus the act of circumcision entails a violation of both "you may not hide yourself" and of "nor shall you stand idly by the blood of your fellow." Although a single negative commandment is suspended under certain conditions in order to permit the discharge of a positive obligation, multiple negative commandments are not suspended for this purpose.

Rabbi Breisch further argues that circumcision is a *mitsvah* which may be fulfilled at a later time and hence may be delayed for the sake of a *mitsvah overet*, i.e., a *mitsvah* which, if delayed, will be totally abrogated. The Gemara, *Nedarim* 31b, explains that Moses delayed the circumcision of his sons because God commanded him to return to Egypt. Fulfillment of that command, which constituted a *mitsvah overet*, could not be delayed, argues Rabbi Breisch, and,

therefore, took precedence over fulfillment of the *mitsvah* of circumcision which could be performed at a later time. Similarly, concludes Rabbi Breisch, since failure to perform surgery in a proper manner for the correction of hypospadias will result in the abrogation of the *mitsvah* of procreation on the part of the child, circumcision may be delayed in order to make it possible for him to sire children.

This latter argument is predicated on the assumption that since circumcision can be performed subsequent to the eighth day it is not deemed to be a *mitsvah overet*. Support for Rabbi Breisch's view with regard to this point may be found in *Magen Avraham, Orach Hayyim* 687:5, who explains a ruling of an earlier authority on the basis of this thesis. It is, however, at variance with the opinion of R. Zevi Benjamin Auerbach, *Nahal Eshkol*, II, 40:12 (Halberstadt, 5628), p.135. A question was posed to *Nahal Eshkol* by a *mohel* who lived in a hamlet in which there was no *minyan* on *Rosh Hashanah*. Each year this individual journeyed to a distant town in order to pray and to hear the blowing of the *shofar*. One year a birth occurred a week before *Rosh Hashanah*. The *mohel* was placed in a quandary. Should he forego the opportunity to hear the blowing of the *shofar* in order to perform the circumcision or should the circumcision be delayed in order that he might hear the blowing of the *shofar*? *Nahal Eshkol* rules that the *mohel* should remain at home in order to perform the circumcision. This ruling is cited and endorsed by R. Shalom Mordecai Schwadron, *Da'at Torah* 584:4. *Nahal Eshkol* considers the possibility that *milah* might not be considered a *mitsvah overet* because it may be performed subsequently while the blowing of the *shofar* is clearly a *mitsvah overet*. He dismisses this contention as "something strange" because the commandment to perform circumcision on the eighth day cannot be delayed. This

position is based upon the recognition that Leviticus 12:3 establishes an additional obligation beyond the *mitsvah* of circumcision; *viz.*, an obligation to perform circumcision on the eighth day specifically. Delay of circumcision beyond the eighth day constitutes abrogation of this latter *mitsvah*. Accordingly, argues *Nahal Eshkol*, although circumcision itself is not a *mitsvah overet*, circumcision on the eighth day does constitute a *mitsvah overet*.

Although there exists some disagreement with regard to the precise nature of the halakhic grounds for the ruling, all rabbinic authorities agree that circumcision may be delayed, if necessary, in order to permit surgical correction of hypospadias. Rabbi Glickman correctly notes that when circumcision is delayed there is no reason to perform symbolic "letting of blood" or even partial circumcision on the eighth day. Moreover, such a procedure is forbidden on the grounds that since no *mitsvah* is fulfilled the procedure constitutes an illicit act of "wounding." Furthermore, the father is likely to be misled into believing that proper circumcision has already been performed and may then fail to have circumcision performed in the proper ritual manner in conjunction with reconstructive surgery at a later date.

Of particular moment is a later responsum authored by Rabbi Breisch, *Helkat Ya'akov*, III, no. 36, in which Rabbi Breisch suggests that circumcision may be performed on the eighth day in a manner which will leave sufficient foreskin for subsequent plastic surgery. The *mitsvah* of *milah* requires that circumcision be performed in a manner which exposes the entire glans including the corona or crown. *Hokhmat Adam, Binat Adam*, *klal* 149, and *Hamudei Daniel*, cited by *Pithei Teshuvah, Yoreh De'ah*, 264:13, rule that the foreskin covering this area must be entirely removed by excision. This is also the opinion of R. Judah Asad, *Teshuvot Maharya*, no 250; *Teshuvot*

Yeshu'ot Malko, Yoreh De'ah, no. 42; and R. Abraham Dov Kahana-Shapiro, *Dvar Avraham*, I, no. 27, sec. 2. Other authorities including *Divrei Hayyim, II*, nos. 114-118; R. Menachem Mendel Schneerson, *Zemah Zedek*, nos. 101-102; *Hatam Sofer, Yoreh De'ah*, no. 249; *Maharam Schick, Yoreh De'ah*, no. 245 and *Maharsham*, I, no. 27, disagree and maintain that the essence of *milah* is simply exposure of the glans which may be accomplished by retracting the foreskin in a manner which leaves the glans exposed. R. Mordecai Jaffe, *Teshuvot Maharam Yafo*, no. 12, discusses both possibilities and states that he is unable to resolve the question definitively. The question hinges primarily upon the meaning of the Hebrew word "yimol—he shall circumcise" (Leviticus 12:3), i.e., whether the word means "he shall cut" or whether its connotation is "he shall remove" as is the apparent meaning of the term in Deuteronomy 10:16 and Deuteronomy 30:6.

Citing the commentary of *Tevu'at Schor* on *Shabbat* 137a and *Teshuvot Nefesh Hayah, Yoreh De'ah*, no. 73, Rabbi Breisch opines that even according to the opinion of the authorities who rule that retraction of the foreskin is sufficient for fulfillment of the *mitsvah*, the major portion of the foreskin must nevertheless be severed by cutting, while the remainder may be retracted by pushing it toward the body so that the entire glans is exposed.¹³

Thus there exists a possible method of performing *milah* on the eighth day without compromising the success of future corrective surgery. It may be possible for the *mohel* to cut off a major part of the foreskin and to slit the remainder lengthwise and then to fold it back over the corona thereby exposing the entire glans. The portion of the foreskin remaining on the membrum could then be utilized subsequently for purposes of plastic surgery. Rabbi Breisch rules that the opinion of the authorities who main-

tain that the entire foreskin need not be removed by excision may be relied upon in order not to delay fulfillment of the *mitsvah* of circumcision. Of course, this procedure may be undertaken only if, in the opinion of competent medical specialists, the remaining foreskin is sufficient for subsequent reconstructive surgery. The procedure recommended by Rabbi Weisberg is identical to that described by Rabbi Breisch. Rabbi Weisberg reports that this procedure received the approbation of the late Rabbi Pinchas Epstein, former head of the *Bet Din* of the *Edah ha-Haredit*, and of the present incumbent of that position, R. Yitzchak Weisz, as well as the approval of two other prominent Israeli halakhic authorities, Rabbi Shlomoh Zalman Auerbach and Rabbi Yosef Eliashiv.

Medical specialists consulted by this writer advise that the procedure described by Rabbi Weisberg may or may not be contraindicated medically depending upon the size of the foreskin, the location of the congenital orifice, and the amount of tissue required for corrective surgery. In their opinion, this procedure would be medically acceptable in only a small proportion of cases. They are particularly skeptical with regard to the efficacy of this procedure in situations involving chordee as well as hypospadias. Correction of chordee requires removal of all contracted connective tissue from the ventral surface and covering the straightened but now longer and hence partially denuded shaft with tissue. The mobile, hair-free preputial tissue of the foreskin is required for this purpose. It is unlikely that the tissue remaining subsequent to a partial circumcision would be sufficient for proper performance of the reconstructive surgery. This is particularly true if, as is often the case, the baby is born with a foreskin which is smaller than usual.

Upon perusal of the halakhic and medical literature on the subject of

hypospadias this writer was disturbed by the realization that with the single exception of Rabbi Moshe Bunim Pirutinsky's treatment of this subject in his excellent and comprehensive work, *Sefer ha-Brit, Likutei Halakhot* 261:47-48, and *Mekor u-Bi'ur Halakhah* 261:5, the halakhic responsa devoted to this topic are uniformly based upon misinformation regarding the nature of the reconstructive surgery necessary for correction of this condition. It is implicitly assumed in the learned rabbinic discussions of this subject that the sole issue is *delay* of circumcision, the assumption being that *milah* is to be performed at the time of surgery. In point of fact most techniques employed to correct this anomaly do not at all provide for excision of the foreskin. The foreskin and mucosa are separated from the glans and retracted over the corona, then slit horizontally and folded along the underside of the penile shaft to create a new urethral tube. Often a buttonhole incision is made in the foreskin in order to allow passage of the glans through the opening and folding of the tissue along the underside. Although excess tissue may be cut away, this procedure does not involve excision of more than a minimal portion of the foreskin.¹⁴ Some procedures which would permit excision of the foreskin have been attempted recently. Chief among these is a technique involving the carrying of a new urethra through a tunnel created in the glans, a process similar to that described by *Hatam Sofer*. This latter procedure is, however, considered medically inadvisable at the present time pending reports of more cases in which successful results have been achieved as well as the passage of sufficient time to evaluate the end results.¹⁵

Although the accepted techniques employed in correcting hypospadias are different from those described in the published responsa, the halakhic issues involved in such procedures are identical to those discussed by Rabbi Breisch in

vol. III of his *Helkat Ya'akov*. The principle applied by Rabbi Breisch to partial circumcision on the eighth day, namely, that retraction of the foreskin constitutes an acceptable form of fulfillment of the ritual requirement, may be applied to retraction of the foreskin in conjunction with reconstructive surgery.¹⁶

Depending upon the degree of chordee and the location of the congenital orifice it may, in some cases, be possible to excise a major portion of the foreskin at the time that reconstructive surgery is performed. If not medically contraindicated, this is halakhically the preferred procedure. The act of severing the foreskin should be performed by a qualified *mohel* or by an observant Jewish physician. Indeed, in all cases, since retraction of the foreskin constitutes circumcision according to the authorities upon whom Rabbi Breisch relies, the retraction should be performed by a *mohel* or by an observant physician. The procedure should also be performed during daylight hours rather than at night and care should be taken that there is no adhesion of tissue to any part of the corona.¹⁷

In some few cases of hypospadias in which no accompanying chordee is present and in which the congenital orifice is located at the base of the glans it may be possible to perform whatever corrective surgery is necessary without utilization of the foreskin and hence in such situations there is no medical reason for delaying circumcision. Indeed, some urologists question the medical need for any corrective surgery in such cases.¹⁸ Since in some cases the possibility of circumcision will depend upon the surgical technique used this is a factor to be considered when alternate surgical approaches are feasible. For this reason, it is advisable that a competent rabbinic authority confer with the physician in each such instance before a determination is made.

This writer, following consultation with a number of urologists, would recommend for the consideration of

physicians performing such reconstructive surgery and of halakhic scholars a modification of the techniques currently employed. The purpose of the proposed modification is to perform circumcision in a manner compatible with the opinion of those authorities who require excision of the foreskin rather than simply uncovering of the glans.

At present, the surgeon does not completely sever the foreskin after it is stretched over the exposed portion of the underside of the penile shaft. The reason for leaving a portion of the foreskin attached is to assure an uninterrupted flow of blood. This, in turn, serves to heighten greatly the likelihood that the transfer of the flap will be successful.¹⁹ The attachment of the foreskin to a portion of the body other than the glans which it covers in the natural state does not appear to constitute a halakhic defect with regard to circumcision even according to the authorities who require excision of the foreskin. Hence grafting of the foreskin elsewhere along the penile shaft poses no problem with regard to fulfillment of the *mitsvah* of circumcision. The sole problem is the failure to excise the base of the flap which has been transferred in this manner.

It is this writer's suggestion that such excision be performed at a time subsequent to completion of the reconstructive surgery after the surgical wound has completely healed. At that time the skin at the base of the flap, which is the sole remaining site of original attachment, may be incised with a scalpel. Since during the healing process alternate blood supply is established, this excision may be accomplished without compromising the success of reconstructive surgery, provided that this procedure is undertaken

subsequent to completion of the healing process. Following incision and complete severance of the original attachment of the foreskin the wound may be reapproximated with sutures. Such reattachment of the foreskin does not appear to present any halakhic problem, particularly since despite reattachment the glans remains totally exposed. Such reattachment is no more than the implantation of the foreskin at a site of the body which the foreskin does not cover in its natural state. This procedure thus provides for circumcision in the optimal manner, i.e., excision of the foreskin rather than merely exposure of the glans, but does not compromise correction of hypospadias since it is performed only after reconstructive surgery has been completed.

In performing this procedure the epithelial tube constructed on the dorsal side of the penile shaft in place of the missing segment of the urethra should terminate at a point just short of the corona since fulfillment of the *mitsvah* of *milah* requires that the foreskin be removed from the entire glans including the corona.²⁰ Among the various techniques described in the medical literature some involve bringing the urethra to the base of the glans while others provide for bringing the urethra to the tip of the glans. Termination of the urethra at the base of the glans in no way impedes intercourse or procreation. If, in the opinion of a urologist, it is deemed necessary to extend the urethra beyond the base of the glans—a procedure which, as has been noted, poses an additional halakhic problem—it is imperative that a competent rabbinic authority be consulted before corrective surgery is performed.

NOTES

1. See also R. Moshe Bunim Pirutinsky, *Sefer ha-Brit* (New York, 5732), *Likutei Halakhot* 263:48; Cf., R. Ya'akov Breisch, *Helkat Ya'akov*, II, no. 20, sec. 3.

2. A description of what is apparently a case of chordee appears in an entirely different context in *Teshuvot Rav Pe'alim*, III, *Even ha-Ezer*, no. 2.
3. A similar remedy is described also by R. Shneur Zalman Ashkenazi of Lublin, *Teshuvot Torat Hesed*, *Even ha-Ezer*, no. 38. Cf., R. David Menachem Babad, *Teshuvot Havazelet ha-Sharon*, II, *Even ha-Ezer*, no. 12.
4. One additional factor present in the case of *Avnei Nezer* is that in the situation brought to his attention the procedure was to be performed within the first neonatal week. Although it would preclude circumcision on the eighth day, the procedure, if performed prior to that time, is undertaken at a time when, arguably, there is as yet no obligation with regard to the *mitsvah* of circumcision; see also *Minhat Hinnukh*, no. 4, p. 8, and no. 97, and a responsum of R. Abraham Nathan Elberg, son-in-law of the author of *Teshuvot Tirosh ve-Yizhar*, published in *Tirosh ve-Yizhar*, no. 127. Cf., below, note 6.
5. See R. Malkiel Zevi Tennenbaum, *Teshuvot Divrei Malki'el*, V, no. 148; R. Yehudah Leib Zirelson, *Azei ha-Levanon*, no. 61; and R. Moshe Perlmutter, *Teshuvot Even Shoham, Yoreh De'ah*, no. 38. *Tirosh ve-Yizhar*, no. 127, reports that this question is also discussed by R. Elyahu Klatzkin in a brief work entitled *Dvar Eliyahu*. To my regret, I have been unable to locate this book. See also *Sefer ha-Brit, Likutei Halakhot* 261:47-48 and *Sefer ha-Brit, Mekor u-Bi'ur Halakhah* 261:5.
6. R. Malkiel Zevi Tennenbaum, *Divrei Malki'el*, V, no. 148, addressing himself to the identical query, denies that the orthopedic problem constitutes "even danger to a limb," but nevertheless permits the cast to be applied. He further adds that this may be done only prior to the eighth day while there is, as yet, no immediate obligation with regard to circumcision even though fulfillment of the *mitsvah* will subsequently be delayed. He rules, however, that the procedure may not be performed on the eighth day or thereafter since at that time there already exists an obligation to perform circumcision; see also *Teshuvot Tirosh ve-Yizhar*, no. 127. *Avnei Nezer* notes the same consideration and advises against performing the procedure on the eighth day if it is possible to do so earlier. Citing *Tosafot Rid, Kiddushin* 29a, *Avnei Nezer* declares that the obligation concerning circumcision devolves upon the father on the evening of the eighth day even though the act of circumcision cannot be performed until daybreak. Accordingly, he advises that the cast be applied prior to the evening of the eighth day.
Teshuvot Even Shoham, Yoreh De'ah, no. 38, posits an obligation devolving upon the father from the moment of birth to make preparations for circumcision on the eighth day. *Tirosh ve-Yizhar*, no. 97, forbids a procedure even before the eighth day which would result in postponement of circumcision unless the child suffers at least "some pain" as a result of the orthopedic anomaly.
7. See also *Teshuvot Even Shoham, Yoreh De'ah*, no. 38. Cf., *Teshuvot Helkat Yo'av, hashmatot*, sec. 89, who states that a person is exempt from fulfillment of any *mitsvah* which would entail either sickness or great pain; *Helkat Ya'akov*, however, sanctions only passive non-fulfillment and expressly prohibits an action which renders a *mitsvah* nugatory. See also R. Abraham Pietarkovsky, *Piskei Teshuvah*, I, no. 120, who suggests that this exemption may not pertain to fulfillment of the *mitsvah* of circumcision since by its very nature circumcision, as distinct from other *mizvot*, entails pain.
8. *Piskei Teshuvah* also cites Rashba, *Baba Kamma* 9b, who explains that the rationale underlying the twenty percent limitation is the consideration that expenditure of a greater amount might lead to impoverishment and to the individual becoming a burden upon the community. Although this consideration does not apply in the case at hand, Rabbi Pietarkovsky opines that Rashba's comments should not be understood in a literal manner.
Avnei Nezer's argument as it pertains to the *mitsvah* of circumcision, is, however, subject to question on other grounds. *Minhat Hinnukh*, no. 5, in his concluding remarks, suggests that a person may be obligated to expend his entire fortune in order to fulfill a *mitsvah* when non-fulfillment entails the penalty of *karet*. This position is espoused unequivocally by *Ma'aseh Bezalel*, cited by *Sedei Hemed, Kellalim, ma'arekhet ha-lamed*, no. 107, s.v. *vekatav od sham*. Moreover, *Minhat Hinnukh*, no. 9, sec. 3, and no. 423, suggests that a person is not obligated to expend his entire fortune in order to fulfill a *mitsvah* if non-fulfillment entails but a single transgression, e.g., *mazah* or *lulav*; however, should non-fulfillment involve constant transgression, e.g., *mezuzah* or, as in our case,

