

## SURVEY OF RECENT HALAKHIC PERIODICAL LITERATURE

### RETURNING FROM MISSIONS OF MERCY ON THE SABBATH

In recent years there has been a marked increase in the number of observant young men and women entering medicine as a profession. Committed, as they are, to rendering the best medical care of which they are capable and to meticulous observance of the commandments, at times they find themselves confronted with conflicts between professional and religious commitments and their personal needs. With increasing frequency rabbinic decisors are called upon by observant health care professionals to offer guidance in resolving problems of this nature. Providing for the proper care of patients in a manner consistent with Sabbath regulations as well as with the physician's physical and spiritual need for Sabbath repose is a source of particular concern.

It is a fundamental and well-known principle of Jewish law that halakhic strictures regarding observance of *Shabbat* and *Yom Tov* may not interfere with the treatment of a dangerously ill patient. Thus there is no question whatsoever that a physician is required to attend a patient who becomes ill on *Shabbat* or *Yom Tov* even if his visit requires travel entailing acts which in other circumstances would be biblically proscribed. However, otherwise prohibited acts are permitted only for the benefit of the patient but not for the convenience of the doctor. Thus, once the treatment of the patient has been completed, further restricted activities

cannot be sanctioned. A physician called to the hospital or to the patient's home on *Shabbat*, while quite prepared to fulfill his responsibilities toward his patient on the *Shabbat* no less than on a weekday, is understandably distressed at the prospect of being deprived of Sabbath rest and enjoyment of the company of his family even after his professional services are no longer needed. Accordingly, doctors frequently inquire whether there exist grounds for permitting them to make the return journey in order to spend the balance of the day with their families in a Sabbath atmosphere.<sup>1</sup> Similar queries have been addressed to rabbinic authorities by various local chapters of Hatzolah, a network of volunteers who provide ambulance service and emergency medical assistance in the New York metropolitan area. Indeed, a number of recent responsa addressing this topic were solicited because Hatzolah groups found it necessary to establish communal policy with regard to this issue. Useful surveys of rabbinic sources pertaining to this question have been authored by R. Menachem Waldman, *Tehumin*, III (5742), 38-48, and R. Mordecai Halperin, *Assia*, IV (5743), 60-71.

#### TALMUDIC SOURCES

There are, to be sure, talmudic sources indicating that at least some infractions

of Jewish law are permitted in order to enable individuals engaged in life-saving missions to return to their homes on *Shabbat*. Ordinarily, on the Sabbath a person may stroll no more than 2,000 cubits beyond an inhabited area. Travel beyond that distance is forbidden even within another inhabited area. A significant exception is made for persons who have completed a mission of mercy. The Mishnah, *Rosh ha-Shanah* 23b, declares, "... even a midwife who comes to assist in birthing and one who comes to deliver from fire, from soldiers, from the river or from a ruin are as the inhabitants of the city and have [the privilege of walking] two thousand cubits in every direction." The identical rule is extended by the Mishnah, *Eruvin* 44b, to encompass a person who embarks upon a mission of mercy but whose services prove to be unnecessary: "One who has exited [beyond the ordinarily permitted area of two thousand cubits] and they said to him 'The matter has already been completed' has [the privilege of walking] two thousand cubits in every direction . . . for all who exit in order to deliver from danger [are permitted to] return to their place."

The latter formulation, however, contains an inherent discrepancy. The Mishnah accords the rescuer a right of Sabbath travel identical to that enjoyed by the individuals whom he seeks to rescue, viz., the right to travel by foot within a radius of 2,000 cubits of the perimeter of the city in which he finds himself. The Mishnah then concludes with an explanatory phrase indicating that such individuals may return to their point of departure. The implication of the latter statement is that they may journey even more than 2,000 cubits if it is necessary for them to do so in order to return to their homes.<sup>2</sup> The Gemara offers two resolutions of this apparent contradiction, each of which is predicated upon the thesis that the Mishnah records two separate and distinct rules. R. Judah explains in the name of Rav that the individuals in question are

granted the right to travel only a distance of 2,000 cubits. However, if their homes are within that distance, individuals who come to the defense of fellow Jews during periods of unrest are permitted to carry their weapons with them when returning to their homes. Thus the regulation formulated in the final clause of the Mishnah refers only to rescuers involved in warding off attackers but not to individuals whose mission does not require the use of arms. The Gemara reports that this dispensation was granted in the wake of a specific historical occurrence. Originally, upon completion of their mission, people who in the course of a mission of rescue were compelled to bear arms on the Sabbath, were wont to leave their weapons in the house nearest the city wall. On one occasion, individuals returning from such a mission were recognized and pursued by the enemy. Finding themselves endangered, they entered the house in which the arms had been deposited in order to retrieve their weapons. The enemy pursued them into the house with the result that the rescuers "trampled one another and killed among themselves more than the enemy killed." At that time the Sages ordained that on future occasions of a like nature the rescuers should carry their weapons with them until reaching the safety of their homes. R. Nahman bar Yitzhak (according to the text and commentary of Rabbenu Hannanel) maintains that the 2,000-cubit limit applies in most cases of life-saving activity, including rescue from an enemy, provided that the enemy has been totally routed. The rule permitting the would-be deliverers to return to their places of origin, declares R. Nahman bar Yitzhak, pertains only to situations in which the enemy has gained the upper hand and is designed to afford retreating rescuers a measure of protection from marauding soldiers. Thus, with the exception of bearing arms in a situation fraught with potential danger, the sole dispensation explicitly granted to those engaged in missions of mercy is

the right to travel by foot within a radius of 2,000 cubits upon completion of their mission.

HITTIRU SOFAN MISHUM  
TEHILLATAN

However, Rashba, *Beitsah* 11b, and *Tosafot*, *Eruvin* 44b and *Rosh ha-Shanah* 23b, add an additional point of elucidation that is absent in other sources and which has the effect of placing the matter in a somewhat different halakhic perspective. Both authorities adduce the halakhic principle "they permitted the end for the sake of the beginning (*hittiru sofan mishum tehillatan*)." This formula reflects the fact that in order to encourage certain activities the Sages found it necessary to sanction subsequent actions as well even though those subsequent actions are ordinarily proscribed. Thus, the Gemara, *Beitsah* 11b, records that it is permitted to spread the hides of an animal on the ground in order that they be softened by being trampled upon by passers-by, to replace shutters upon portable market stalls and for a priest serving in the Temple to replace a bandage removed prior to his participation in the sacrificial ritual. Each of those actions is ordinarily forbidden on *Shabbat* and *Yom Tov* by virtue of rabbinic decree but is permitted in order to encourage the slaughter of fresh meat, to make food readily available for the holiday repasts and to induce the priests to perform their assigned duties. Justification for the suspension of those prohibitions is couched in the formula "[with regard to] three matters did they sanction the end because of the beginning." Rashba, in his commentary on *Beitsah* 11b and as cited by *Shitah Mekubbetset*, *ad locum*, remarks that dispensation to move about within a 2,000-cubit radius of the city was similarly granted to persons engaged in life-saving activities in order to encourage them to embark upon missions of mercy.

Absent such dispensation, they would have been restricted to an area of four cubits from wherever they might find themselves upon completion of their tasks. According to Rashba, an exception was made for persons engaged in the preservation of life because the prospect of being faced by inconvenience upon completion of their mission might result in a lack of resolve or in procrastination in embarking upon a life-saving endeavor. The author of *Shitah Mekubbetset*, citing his teacher, apparently maintains that this dispensation does not constitute the suspension of a rabbinic prohibition as an inducement to engage in life-saving activity but represents an integral, equitable adjustment of rabbinic enactments governing Sabbath travel adopted in the guise of assigning to the rescuers the selfsame domicile as the rescued.

Nevertheless, even according to Rashba, there are no apparent grounds for permitting infractions of biblical law in the course of a return journey. The dispensation with regard to travel on the Sabbath granted to those embarking upon a mission of rescue is the product of rabbinic legislation. Ramban, *Eruvin* 43a, takes note of the principle that there is no rabbinic authority to sanction overt violation of biblical prohibitions and explicitly remarks that the dispensation granted by the Sages with regard to travel on the Sabbath is limited to infractions which are only rabbinic in nature. Although he does not cite the comments of Ramban, R. Joseph Babad, *Minhat Hinnukh*, no. 24, *s.v. vehinneh mevuar*, notes that, although walking a distance greater than 2,000 cubits is proscribed by virtue of rabbinic edict, many early authorities maintain that traversing a distance of more than three parasangs (twelve *mil*) is forbidden by biblical law. Hence, rules *Minhat Hinnukh*, one who has already travelled more than three parasangs even in order to save lives must remain within four cubits of wherever he finds himself. Since each act of moving more than four cubits

beyond a distance of three parasangs constitutes a violation of biblical law, concludes *Minhat Hinnukh*, such action is not subject to rabbinic dispensation.<sup>3</sup> The identical principle applies to all matters which are permitted on the basis of *hittiru sofan mishum tehillatan* as is clearly indicated by *Shitah Mekubbetset*, *Beitsah* 11b; *Bah*, *Orah Hayyim* 49, s.v. *ha-shohet*; *Magen Avraham*, *Orah Hayyim* 497:18; *Nishmat Adam* 91:1; and R. Zevi Pesach Frank, *Teshuvot Har Zevi*, *Orah Hayyim*, II, no. 10. Thus, since the Sages are without power to sanction overt abrogation of biblical law, in every case in which the principle *hittiru sofan mishum tehillatan* is invoked only rabbinic prohibitions are suspended in order to encourage the desired result.

Moreover, it is not clear that even a rabbinic prohibition, e.g., permitting a non-Jew to operate a motor vehicle, may be violated in undertaking the return journey. On the contrary, individuals who engage in life-saving missions are treated as residents of the locale in which they find themselves and even for purposes of returning to their place of domicile they are granted the right of travel within a radius of 2,000 cubits, but not beyond, because travel over a greater distance would entail violation of a rabbinic edict. Particularly according to the authorities who fail to cite the principle of *hittiru sofan mishum tehillatan* as grounds for the dispensation with regard to strolling within a radius of 2,000 cubits, this regulation should be regarded as integral to the rabbinic edict governing delimitation of the area which may be traversed on the Sabbath rather than a license to ignore rabbinic prohibitions. As earlier noted, dispensation to carry weapons on the return trip is rooted in a concern for the safety of the travellers and certainly cannot serve as a paradigm for the suspension of other prohibitions, even of those that are rabbinic in nature.

Nevertheless the comments of *Tosafot*, *Eruvin* 44b, and a literal read-

ing of Rashba, *Beitsah* 11b, convey the impression that those authorities regard violations of even biblical prohibitions as permitted to these individuals on their homeward journey on the basis of *hittiru sofan mishum tehillatan*. As noted earlier, the Gemara, *Eruvin* 45a, does permit at least limited violation of biblical prohibitions in the course of the return journey. R. Judah in the name of Rav permits the carrying of weapons on the return journey within a distance of 2,000 cubits; R. Nahman bar Yitzhak permits the bearing of arms during the course of a return journey of even an unlimited distance in a situation in which the enemy has obtained the upper hand. Rabbenu Yehonatan, in his commentary on *Rif*, *ad locum*, observes that no qualification is posited by the Gemara with regard to the halakhic classification of the area in which the arms may be transported. Hence, under the circumstances described, the weapons may be transported even through a public thoroughfare despite the fact that such an act ordinarily constitutes a transgression of a biblical prohibition. However, the grounds for such dispensation are ostensibly that the individuals described are themselves endangered and, accordingly, permission to transport weapons is predicated upon a concern for the preservation of their lives. Hence those provisions of Halakhah cannot serve as a paradigm for permitting violation of biblical prohibitions on the return trip by rescuers who are themselves in no danger. This analysis of the discussion in *Eruvin* is clearly enunciated by *Shitah Mekubbetset*, *Beitsah* 11b.

However, *Tosafot*, *Eruvin* 44b, speaks of the dispensation regarding the carrying of arms on the return journey as an instance of invocation of the principle of *hittiru sofan mishum tehillatan*. A literal reading of Rashba, *Beitsah* 11b (rather than as understood by *Shitah Mekubbetset*), yields a similar impression. If this analysis of the position of *Tosafot* and Rashba is correct it would appear that, according to those author-

ities, all persons engaging in life-saving activities may ignore even biblical proscriptions on their return journey. This is indeed the position of R. Moses Sofer, *Teshuvot Hatam Sofer, Orah Hayyim*, no. 203, *Hoshen Mishpat*, no. 194, and VI, no. 99 and apparently also of R. Jacob Emden, *She'elat Ya'avets*, I, no. 132, s.v. *u-de-kashya*. In *Hoshen Mishpat*, no. 194, *Hatam Sofer* implies that a physician called on *Shabbat* to the bedside of a gravely ill patient may disregard biblical prohibitions if it is necessary for him to do so in order to return to his home. Responding to the argument that the Sages do not have the power to sanction overt suspension of biblical law, *Hatam Sofer*, VI, no. 99, s.v. *de-ika*, responds that authority to do so is limited to infractions of Sabbath laws which may be suspended solely to encourage life-saving activity. The Gemara, *Yoma* 85b, apparently understanding the word "*ve-shameru*" which occurs in Exodus 31:16 as connoting "The children of Israel shall preserve the Sabbath," formulates the dictum "Better to violate one Sabbath in order to observe many Sabbaths" as justification for the violation of Sabbath restrictions for the sake of preserving life. *Hatam Sofer* argues that the same rationale may be employed in the context of *hittiru sofan mishum tehillatan* in order to assure that "many Sabbaths" be observed.<sup>4</sup>

However, not all rabbinic decisors agree that rabbinic prohibitions may be ignored in order to complete the return journey on *Shabbat*. The inference that *Tosafot* and Rashba sanction violations of biblical law for the purpose of a return journey by all engaged in life-serving activity is rebutted by R. Zevi Pesach Frank, *Teshuvot Har Zevi, Orah Hayyim*, II, no. 10. Rabbi Frank notes that such dispensation is explicitly recorded only with regard to those who travel to defend against armed attack but not with regard to a midwife or one who engages in saving a potential drowning victim.<sup>5</sup> Rabbi Frank apparently maintains that,

at least according to *Tosafot* and Rashba, placing oneself in a situation of danger which then requires violation of biblical proscriptions in order to save one's life is prohibited only by virtue of rabbinic decree.<sup>6</sup> According to Rabbi Frank, it is that decree, and that decree alone which, by application of the principle *hittiru sofan mishum tehillatan*, is suspended on behalf of individuals who have been engaged in life-saving activities.<sup>7</sup> Thus the rescuers are permitted to embark on their return journey by virtue of rabbinic dispensation. Having done so, they find themselves in danger and, accordingly, may transport weapons in order to protect themselves. The sole infraction consists of having placed themselves in danger in the first instance. That infraction, which is rabbinic in nature, is permitted on the basis of *hittiru sofan mishum tehillatan*.

Rabbi Frank contends that *Tosafot* and Rashba invoke the concept of *hittiru sofan mishum tehillatan* in permitting biblical infractions only in the case of those who render aid in defending against marauding soldiers, i.e., when the rescuers are themselves subject to danger during the course of the return journey, but not in the case of a midwife or one who rescues from drowning, i.e., individuals who are themselves not endangered in their attempt to save others. However, an examination of the words of Rashba in his commentary on *Beitsah* 11b<sup>8</sup> reveals that this contention is contradicted by Rashba himself since Rashba explicitly states that the midwife is permitted to return to her locale on the basis of the principle *hittiru sofan mishum tehillatan*. Rashba's comment is indeed problematic since, as noted by *Shitah Mekubbetset*, it appears to contradict the ruling of the Mishnah which permits a midwife to travel only a distance of 2,000 cubits but does not extend *carte blanche* for unlimited travel in the course of the return voyage. Nevertheless, insofar as an analysis of Rashba's comments is concerned, there is no reason to assume that the midwife is

herself endangered in any way and there is certainly no hint of such a contention in the words of Rashba. Assuming that Rashba agrees that travel over a distance greater than three parasangs is biblically forbidden, it must be concluded that Rashba maintains that even biblical prohibitions are suspended in order to protect against possible future laxity or laziness.<sup>9</sup>

*Hatam Sofer's* position was, in effect, rejected at a much earlier time by R. Shlomo Kluger, *Teshuvot u-Vaharta ba-Hayyim*, no. 99. Rabbi Kluger forbade a person travelling on the Sabbath for the purpose of summoning medical assistance to return on the Sabbath in a situation in which the return journey would have involved a distance greater than three parasangs and hence, according to many authorities, entailed a biblical infraction. *Hatam Sofer's* position is also disputed by R. Shalom Mordecai Schwadron in his *Hagahot Maharsham, Rosh ha-Shanah* 22b, and in his *Orhot Hayyim* 597:11. Similar rulings limiting the application of *hittiru sofan mishum tehillatan* to infractions of rabbinic law are recorded by R. Shlomo Zalman Auerbach, *Moriah*, Sivan-Tammuz 5731, pp. 29–30, reprinted in his *Minhat Shelomoh*, no. 7, and no. 8;<sup>10</sup> R. Eliezer Waldenberg, *Tsits Eli'ezer*, VIII, no. 15, chap. 7, sec. 12 and chap. 13, sec. 8, and XI, nos. 39 and 40; R. Joshua Neuwirth, *Shemirat Shabbat ke-Hilkhatah* (Jerusalem, 5739) 40:69–71; R. Isaac Liebes, *Halakhah u-Refu'ah*, III (5743), reprinted in his *Teshuvot Bet Avi*, IV, *Orah Hayyim*, no. 16; and Dr. Abraham S. Abraham, *Nishmat Avraham, Orah Hayyim* 329:9, note 7.<sup>11</sup>

#### RAMBAM'S POSITION

Rambam's codification of the regulations formulated in *Eruvin* 45a is fraught with difficulties. Rambam, *Hilkhhot Shabbat* 27:17, records the general rule that those who have embarked upon a life-saving mission may journey a dis-

tance of 2,000 cubits upon completion of their mission but concludes that "if the hand of the gentiles is strong and they are afraid to remain in the place where they effected the rescue they may return to their own location on the Sabbath with their arms." This ruling certainly seems to reflect the opinion of R. Nahman bar Yitzhak. However, elsewhere, Rambam appears to record an entirely contradictory ruling. In an earlier reference to the identical situation involving individuals who have come to defend their brethren against armed attack, Rambam, *Hilkhhot Shabbat* 2:23, rules that "when they have delivered their brethren they are permitted to return to their own location with their weapons on the Sabbath *in order not to cause them to be remiss in the future (she-lo le-hakhshilan le-atid lavo)*." Similar apparently contradictory rulings, obviously based upon Rambam's statements, are recorded in *Shulhan Arukh, Orah Hayyim* 329:9 and 407:3. It follows that if the rationale recorded in *Hilkhhot Shabbat* 2:23 is regarded as normative, all persons engaged in missions of mercy may violate biblical prohibitions when it is necessary to do so in order to complete their return journey "*she-lo le-hakhshilan le-atid lavo*," i.e., so that they not be lax or procrastinate on future occasions when the lives of others are endangered.

Since there is no talmudic source for the statement recorded by Rambam in *Hilkhhot Shabbat* 2:23 and, moreover, since that statement is contradicted both by the discussion in *Eruvin* 45a and by Rambam's own ruling in *Hilkhhot Shabbat* 27:17, most commentators on Rambam's ruling maintain that Rambam intended to express only a general rule in 2:23 to be modified and made precise in 27:17. This analysis of Rambam's position is espoused by *Maggid Mishneh; Mirkevet ha-Mishneh; Ma'aseh Roke'ah; Yad Eitan, Sefer ha-Likkutim, Shabbat* 2:23; *Eliyahu Rabbah* 407:6; R. Shlomo Kluger, *Teshuvot u-Vaharta ba-Hayyim*, no. 99; and R. Eliezer Wal-

denberg, *Tsits Eli'ezer*, XI, no. 39, sec. 7. Although Rambam's employment of the phrase "*she-lo le-hakhshilam le-atid lavo*" is not really explained in an adequate manner by these sources,<sup>12</sup> they understand Rambam as agreeing that, save for persons defending against armed aggressors, individuals engaged in delivering others from danger may not violate biblical restrictions in order to return to their homes.<sup>13</sup>

The need to sanction transgression of biblical law for the specific purpose of preventing individuals from being remiss on future occasions is posited by the Gemara in an entirely different context. Sabbath laws must be disregarded in order to enable the Bet Din to sanctify the new moon on the proper day. Accordingly, witnesses who sight the new moon must immediately proceed to the Bet Din, even though this involves violating the Sabbath, in order to testify to this event for purposes of enabling the Bet Din to sanctify that day as *Rosh Hodesh*. The Mishnah, *Rosh ha-Shanah* 21b, reports, "It happened once that more than forty pairs [of witnesses] were on their way and R. Akiva detained them in Lod. Rabban Gamaliel thereupon sent to him saying, 'If you prevent the multitude [from coming to give evidence] you will cause them to stumble in the time to come (*atah makhshilan le-atid lavo*).'"<sup>14</sup> As noted by R. Jacob Emden, *She'elat Ya'avets*, I, no. 132, and by *Teshuvot Hatam Sofer*, *Orah Hayyim*, no. 203, the rationale "you will cause them to stumble in the time to come" is apparently sufficient justification to warrant suspension of even biblical prohibitions. Witnesses to the appearance of the new moon customarily carried staffs and took food with them on their journey for appearance before the Bet Din and, presumably, transported those items even through public thoroughfares (*reshut ha-rab-bim*). Moreover, the journey from Lod to the Bet Din (which at the time sat either in Jerusalem or Yavneh<sup>15</sup>) presumably spanned a distance of more than

three parasangs.<sup>16</sup> Rabban Gamaliel's statement, however, appears to be limited to the situation described in the Mishnah rather than a paradigm governing other cases as well. Since any act necessary for sanctification of the new moon is permitted on the Sabbath, and since the new moon was as yet not sanctified, all the witnesses were indeed engaged in the actual process of sanctification. Moreover, it may be contended that Sabbath restrictions are suspended not only for the immediate sanctification of the new moon on that Sabbath day but also, if necessary, to ensure the sanctification of any future new moon as well.<sup>17</sup> Hence, since there existed a genuine concern that on some future occasion the Court might find itself without witnesses, permitting travel on the Sabbath by all witnesses does actually serve to make possible the sanctification of some future new moon.<sup>18</sup>

#### SUSPENSION OF BIBLICAL PROHIBITIONS

Among contemporary decisors the late R. Moshe Feinstein is the sole authority who permits violation of biblical prohibitions in the course of a return journey.<sup>19</sup> Rabbi Feinstein's views are recorded in contributions to *Tehumin*, I (5740), reprinted in *Iggerot Mosheh*, *Orah Hayyim*, IV, no. 80, and briefly noted in his contribution to *Halakhah u-Refu'ah*, III (5743).<sup>20</sup> Although he understands *Tosafot* and Rashba as sanctioning even the violation of biblical prohibitions on the basis of *hittiru sofan mishum tehillatan*, Rabbi Feinstein recognizes that the Mishnah permits a midwife who has completed her ministrations to travel a distance of only 2,000 cubits even in order to return to her home. He proceeds to argue that such a limitation applies only to individuals who recognize that their life-saving mission, by virtue of its very nature, may be prolonged beyond the Sabbath. Such individuals, he argues, prior to setting

out on their mission of rescue fully comprehend that they may not be able to return to their homes during the course of *Shabbat*. Since they have, in fact, embarked upon their mission, it is clear that such individuals are not deterred by the prospect of being discomfited by virtue of being away from their homes and families for the duration of the entire Sabbath. Nor, since they have correctly ignored considerations of personal comfort, is it to be presumed that such considerations will deter them in the future. Therefore, no special dispensation need be granted them in the event that they complete their tasks at an early hour. Others, such as a physician, whose ministrations are usually not unduly prolonged, do not anticipate a delay which would prevent them from returning to the comfort of their homes for the balance of the Sabbath. Hence refusing to allow them to return to their homes because of Sabbath restrictions would have the effect of causing them to procrastinate or even categorically to refuse to undertake missions of mercy on the Sabbath. Individuals whose activities fall within this category, argues *Iggerot Mosheh*, may ignore Sabbath restrictions in order to return home on the basis of the principle *hittiru sofan mishum tehillatan*.

*Iggerot Mosheh* similarly endeavors to show that R. Nahman bar Yitzhak's dictum permitting the carrying of weapons on the return journey when the enemy prevails, while forbidding such action when Jews prevail, is not predicated upon considerations of danger to the rescuers but upon the selfsame distinction with regard to application of the principle of *hittiru sofan mishum tehillatan*. In direct contradiction to the understanding of all previous commentators, *Iggerot Mosheh* interprets R. Nahman bar Yitzhak's statement as permitting those rendering aid to return home only when "the hand of Israel is strong" but not when "the hand of gentiles is strong." This distinction, contends Rabbi Feinstein, is in conformity

with his general thesis. He defines "the hand of Israel is strong" as meaning, not that the Jews are victorious, but as a description of a situation in which Jews are generally secure and protected by the government and hence the incident posing a threat to Jewish lives is an isolated occurrence and without governmental sanction. Under such circumstances, argues *Iggerot Mosheh*, those offering assistance to their beleaguered brethren have every reason to assume that the attackers will not dare to engage in a prolonged operation. Accordingly, those rendering assistance believe that the encounter will be brief in duration and that they will yet be able to return to their homes on the Sabbath. Rabbi Feinstein defines "the hand of the gentile is strong" as referring, not to a victory by the enemy, but to a situation in which Jews are generally insecure and cannot rely upon protection by the government. In such circumstances attackers have no fear of intervention by civil or military authorities and hence they perceive no need for haste in carrying out their act of aggression. Accordingly, since the rescuers have no reason to assume that the confrontation will be brief, they are not permitted to return to their homes even if the engagement is terminated quickly.

Quite apart from the absence of any clear talmudic evidence compelling the distinction drawn by Rabbi Feinstein, it is not at all obvious that the activities of those persons specifically restricted by the Mishnah to travel of no more than 2,000 cubits are of a nature requiring service over a prolonged period of time. The Mishnah enumerates "the midwife who comes to assist in birthing and one who comes to deliver from fire, from soldiers, from the river or from a ruin." Although a midwife is certainly aware of the fact that labor may be prolonged, in many cases labor is relatively swift. The midwife may well be willing to accept the *possibility* of not being able to return home on the Sabbath but not the *certainty* of not being able to do so. Moreover, it is only in unlikely situations

that "rescue from fire" requires service over a prolonged period of time while rescue "from the river," i.e., from drowning, is virtually always swift.

R. Shlomo Zalman Auerbach, *Minhat Shelomoh*, no. 8, takes sharp issue with the position of *Iggerot Mosheh* and points out that even witnesses to the sighting of the new moon are forbidden to return to their homes if the return journey entails a trip of more than 2,000 cubits. There is no evidence, he argues, that people will be deterred from undertaking a mission of rescue because they are unwilling to accept the inconvenience of being away from home and separated from their families for the rest of *Shabbat*.<sup>21</sup>

As noted earlier, R. Zevi Pesach Frank maintains that individuals engaged in life-saving activities, upon completion of their mission, are permitted to travel by foot within a radius of 2,000 cubits because such travel involves no abrogation of any rabbinic enactment. Rather, in ordaining a limit of 2,000 cubits the Sages provided that such individuals be deemed to have been domiciled from the commencement of the Sabbath in the locale in which they find themselves upon completion of their mission and are accorded the same travel privileges as inhabitants of that area. The concept of *hittiru sofan mishum tehillatan*, as formulated by *Tosafot* and *Rashba*, is regarded by Rabbi Frank as limited to permitting such individuals to place themselves in a position of endangerment during the return journey, with the result that violation of biblical prohibitions becomes necessary in order to avoid threats to their own lives. Thus, according to Rabbi Frank, there is no basis for permitting infraction of other rabbinic prohibitions on the basis of *hittiru sofan mishum tehillatan*.<sup>22</sup> Accordingly, Rabbi Frank rules that, while a physician may certainly walk a distance of 2,000 cubits beyond the inhabited area in which he finds himself, he may not direct or permit a non-Jew to drive him home in a motor vehicle. Most

authorities, however, understand the principle of *hittiru sofan mishum tehillatan* as rendering nugatory all rabbinic prohibitions under such circumstances, including the prohibition against directing a non-Jew to perform acts forbidden to a Jew.<sup>23</sup>

#### PROFESSIONALS AS DISTINCT FROM VOLUNTEERS

Nevertheless it appears to this writer that there is another consideration which, if applicable, effectively cancels this dispensation, in at least some circumstances, insofar as physicians are concerned. *Shulhan Arukh, Orach Hayyim* 526:6, rules that, on the second day of a festival, it is permissible to escort the deceased to a cemetery located even more than 2,000 cubits beyond the city and permits such persons to return to their homes on *Yom Tov* as well. Those individuals are permitted to travel distances even greater than 2,000 cubits on their return journey lest they be remiss on future occasions and decline to participate in funerals on *Yom Tov*.<sup>24</sup> *Bi'ur Halakhah, ad locum*, expresses reservations with regard to whether paid members of the *Hevra Kaddisha* enjoy a similar dispensation. He reasons that dispensation from rabbinic proscriptions is granted solely in order to assure that such services will be performed on future occasions. Such encouragement is required in order to assure that volunteers will not be deterred by resultant inconvenience. Individuals who are motivated by a desire to receive a fee for services rendered, he reasons, will not be deterred and hence do not require further inducement.<sup>25</sup> It would appear that the same reasoning applies in the case of a doctor who charges a fee for his services even if he renders a bill for total treatment (*havla'ah*) rather than a specific charge for care rendered on *Shabbat* or *Yom Tov*.<sup>26</sup> This consideration would also appear to apply to a salaried physician who is contractually obligated

