

# Fertility Treatments on Shabbat<sup>1</sup>

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## Introduction

Couples undergoing fertility treatments are often confronted with a variety of unique halachic questions. This essay will address the issues that may arise when these treatments coincide with Shabbat, as well as the principles of Shabbat laws that must be applied in such situations. Our discussion will be limited to those issues that are relevant to the treatments themselves, and not the resulting secondary issues.

## Status of a Woman Undergoing Fertility Treatment

Before discussing the particulars of specific treatments and the halachic problems they present with regards to Shabbat observance, we must first address a fundamental question: Is a woman undergoing fertility treatments allowed to violate any of the laws of Shabbat in the pursuit of those treatments? The permissibility of violating Shabbat regulations for a *choleh* (ill person) depends on their status in regards to the “illness”. The categories which are discussed by the *poskim* in relation to a woman undergoing fertility treatments are *sakanat eiver* (danger to a limb), *choleh she-ein bo sakana* (ill person who is not

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in danger) and *bari* (healthy person).<sup>2</sup>

The consensus of the contemporary *poskim*, including R. Moshe Feinstein, R. Shlomo Zalman Aurebach, R. Yosef Shalom Elyashiv and others, is that a woman undergoing fertility treatments would be assigned the status of a *choleh she-ein bo sakana*.<sup>3</sup>

There are two possible rationales for this ruling. The first reason is based on the verse in which Rachel bemoans her fate as a childless wife: "Give me children – otherwise I am dead!"<sup>4</sup> The Gemara also equates one who does not have children with a "dead" person.<sup>5</sup> Although neither the verse nor the Gemara

2. For a medical opinion on this matter, see R.P. Dickey, et.al. "Infertility is a Symptom, Not a Disease," in *Fertility and Sterility* 74:2 (August, 2000): 398.

3. *Birchat Banim* (R. Zand, p. 270 fn. 32), Richard V. Grazi (Rabbi Gideon Weitzman), *Overcoming Infertility "Fertility Treatment on the Sabbath and Festivals,"* (The Toby Press), 383, nt. 54, *Techumin* (vol. 23, p. 230, fn. 35), and R. Yitzchok Zilberstein, *Melachim Omnayich* (ch. 5, nt. 13). This is also the opinion of R. Asher Weiss; *Techumin*, *ibid.*, p. 220 and R. Herschel Schachter, whose opinion was related orally to this author. See also *Sh"ut Nishmat Shabbat* 5:378 in the name of the Satmar Rav and *Sh"ut Shevet Halevi* 1:61.

The article in *Techumin* reports that this is the opinion of Rav Mordechai Eliyahu, Rav Yaakov Ariel, and Rav Ephraim Greenblatt as well. (See, however, *Sh"ut Rivevot Ephraim* 6:198:2, where Rav Greenblatt assumes that such a woman has the status of *sakanat eiver*). This is also the opinion of Rav Asher Weiss; *Techumin*, *ibid.*, p. 220, in a letter written to Machon Puah, and Rav Hershel Schachter as told to this author. (Rav Schachter suggested that this woman could possibly also have the status of *sakanat eiver*). In *Sh"ut Nishmat Shabbat* 5:378, the Satmar Rav is quoted as saying that a woman undergoing fertility treatments has the status of *choleh kol gufo*. According to the Ramo (*Shulchan Aruch Orach Chaim* 328:17), this is the same status as a *choleh she-ein bo sakana*.

4. *Bereishit* 30:1.

5. *Nedarim* 64b. Maharal (*Gur Aryeh Bereishit* 30:1) explains that this is because an infertile person has no continuation after *his* death. R. Chaim Shmuelewitz (*Sichot Mussar* 5732:31 "Badad Yeisheiv") suggests that the measure of a living human being is the ability to give to others, and one who has no children is in some way lacking that ability to give, which on some level equates him with someone who is not alive and does not have the ability to give at all. This holds true for the other examples in the Gemara as

are meant to be taken literally, we can presume that their descriptions correspond to the psychological pain of a childless woman, and that psychological pain itself might grant her the status of a *choleh*.<sup>6</sup> A second reason to consider a woman undergoing fertility treatment as a *choleh* is that she is in a situation that requires medical attention. Even though she suffers no physical pain or symptoms of illness, the fact that her life situation is of medical concern makes her a *choleh*.<sup>7</sup>

The status of a *choleh she-ein bo sakana* implies certain leniencies that may be relevant to our situation. One leniency is that one may ask a non-Jew to perform a *melacha de-oraita* (act forbidden by Torah law) on Shabbat on behalf of the *choleh*.<sup>8</sup>

A second leniency regarding a sick person who is not in mortal danger (*choleh she-ein bo sakana*) is the possibility of asking a Jew to perform an *issur de-rabbanan* (act forbidden by rabbinic law) for the *choleh*. *Shulchan Aruch* cites a number of opinions among the *Rishonim* regarding this issue.<sup>9</sup>

well. A blind person can't see when someone else is in need and thus can't necessarily give to them. A poor person doesn't have the resources to give to others. A *metzora* ("leper") is required to sit in solitude outside of the Jewish encampment and has no social interaction, which prevents him from giving to others.

6. R. Yaakov Emden, *Mor U-Ketziyah* (*Orach Chaim* 328, *Magen Avraham* 9), writes that someone who is not ill but suffers *tza'ar* (pain) is equivalent to a *choleh she-ein bo sakanah*. See *Techumin* 23, p. 220. See also Sara Barris, "Emotional Issues of Orthodox Couples Experiencing Infertility," in *Medicine and Jewish Law III* (Yashar Books Inc.), 3.

7. *Chelkat Yaakov*, *Orach Chaim* 150, advances this logic. See also *Birchat Banim*, p. 268, nt. 32.

8. *Shabbat* 129a; *Shulchan Aruch*, *Orach Chaim* 328:17.

9. *Shulchan Aruch*, *Ibid.* Rambam (*Hilchot Shabbat* 2:10) differentiates between Torah prohibitions, which cannot be violated for a *choleh she-ein bo sakana*, and rabbinic prohibitions, which may be violated for a *choleh she-ein bo sakana*, even if there is no *sakanat eiver*. See *Maggid Mishnah* and *Kesef Mishneh* there, and *Tur* and *Beit Yosef*, *Orach Chaim* 328:17. The *Shulchan Aruch* also cites *Ran* (*Shabbat* 39b in the *dapei Ha-Rif*, s.v. *u-meha*, s.v. *nimtzeit*, see also *Chiddushei HaRan Shabbat* 129a), who assumes that a regular case of

Ramban<sup>10</sup> (quoted by *Tur*) and Rashba<sup>11</sup> (quoted by *Beit Yosef*) assume that a *choleh she-ein bo sakana*, even when not a case of danger to a limb (*sakanat eiver*), would warrant violation of a rabbinic prohibition through a change in the way that the act is performed (*shinui*), while in a case of *sakanat eiver*, one may violate the prohibition even without a change. *Mishnah Berurah* notes that the opinion of Ramban is adopted by most *Acharonim* (*Taz*, *Magen Avrohom*, *Gra* and others); a Jew may therefore perform a rabbinic prohibition with a modification on behalf of a *choleh she'ein bo sakana*.<sup>12</sup> Specific applications of such leniencies will be discussed later in this article.

Some *poskim* maintain that a woman undergoing fertility treatments has the status of *sakanat eiver* (danger to a limb).<sup>13</sup>

*choleh she-ein bo sakana* in which there is no *sakanat eiver* does not warrant a violation of a rabbinic prohibition, and only *amira le-nochri* (asking a non-Jew to perform a forbidden act on behalf of a Jew) would be permitted in such a case. However, a Jew could violate an *issur de-rabbanan* in a case of *sakanat eiver*. See *Rosh*, *Avodah Zarah* 2:10, who questions whether or not this is correct.

10. *Torat HaAdam*, *Sha'ar HeMeichush*.

11. *Chiddushim*, *Shabbat* 129a, s.v. *amar lei hilchita*. See, however, *Sh"ut Rashba* 3:272, where he seems to contradict his statement in his *chiddushim*. See *Taz* (328:10) and *Nishmat Adam* (69:3, s.v. *u-ma she-katav Beit Yosef*, s.v. *leinyan ikar ha-din*, s.v. *shavti ve-ra-iti*), who discuss this issue. They assume that the opinion recorded in the responsum is mistaken and the real opinion of Rashba is the one that is found in the *chiddushim* as quoted by *Beit Yosef*.

12. *Mishnah Berurah* 328:57. See, however, *Bach*, *Levush*, *Eliya Rabba* and *Eliya Zuta*.

13. *Chelkat Yaakov*, *Orach Chaim* 150; *Rivevot Efraim* 6:198:2; R. Y.Y. Neuwirth, quoted in *Nishmat Avraham* 4, *Orach Chaim*, p. 38 (6 volume edition). Ironically, *Chelkat Yaakov* suggests that she has the status of *sakanat eiver* without having any status of *choleh* (normally we assume that *sakanat eiver* is one step beyond *choleh she-ein bo sakana*). His approach is based on a comment of *Chaye Adam* (69:13) who mentions this notion of having a *sakanat eiver* without being a *choleh* at all.

It is interesting to note that elsewhere (*Yoreh De'ah* 62:6), *Chelkat Yaakov* writes that this woman has at least a status of *miktzat choleh* (slightly ill) because she is unable to have children without medical treatment. That

Since the parts of the body associated with childbirth are not functioning properly in their current state, she cannot have children and she is in danger of losing the ability to give birth entirely as she ages. R. Chaim Na-eh writes that any situation in which a limb is not functioning properly and will not start working until the limb is treated medically is assigned the status of *sakanat eiver*.<sup>14</sup>

As noted above, a Jew may violate a rabbinic prohibition (*issur de'rabbanan*) in a case of *sakanat eiver*, even without modification.<sup>15</sup>

R. Moshe Stern was asked whether a woman who needed to take pills in order to help her conceive could take these pills on Shabbat. R. Stern's response was that this woman is not sick and therefore we should allow her to take the pills since the rabbinic decree of *shechikat samimonim* (grinding spices) was not instituted for a healthy person (although ideally, he suggests dissolving the pills in water before Shabbat and drinking the water on Shabbat to minimize violating any prohibitions). It would appear from his response that R. Stern maintains that a woman undergoing fertility treatments has the status of a healthy person (*bari*) because there is presently

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*teshuva* was written in *Av* 5716. In *Tevet* 5724, R. Breisch indicates definitively that such a woman would have the status of *sakanat eiver*. At the end of the *teshuva* in *Yoreh De'ah*, R. Breisch notes, "Nevertheless it appears in my humble opinion that because of the greatness of the mitzvah to have children (*peru u-revu*) after the great destruction [i.e., the Holocaust] and for the purpose of peace between husband and wife, as is known that this can interfere with the peace at home, it is an obligation on the Rabbis of Israel to exert themselves and to permit [these treatments] according to the principles of the Torah and the *Shulchan Aruch*."

14. *Ketzot Ha-Shulchan, Badei Ha-Shulchan* 138:18, quoted in *Shemirat Shabbat Ke-Hilchata* 33:1:5\*, nt. 8.

15. Some *Rishonim* assume that *sakanat eiver* has a similar status to danger of the entire body (*sakanat kol ha-guf*). See *Meiri Avodah Zarah* 28a, *Tosafot Sukkah* 26a s.v. *ve-afilu, Sh"ut Seridei Aish* vol.1 p. 308-309, *Teshuvot Ve-Hanhagot* 5:97 and *Be-ikvei Hatzon* 10:6.

no illness.<sup>16</sup> According to this classification, even violations of rabbinic prohibitions would be forbidden on Shabbat, although ingesting pills would be permitted, inasmuch as the *gezeira* of *shechikat samimonim* would not apply (see below, “Oral Hormone Pills”).<sup>17</sup>

## Initial Workup

In the initial stages of fertility treatment, the doctor performs a workup to help determine where the problem lies so that appropriate measures can be taken to treat the couple. This testing may include monitoring a complete menstrual cycle through blood-work, ultrasounds, an HSG test (hysterosalpingogram), semen analysis,<sup>18</sup> hysteroscopy, and other tests. These tests are not treatments and need not be performed on Shabbat. They should therefore be scheduled during the week.<sup>19</sup>

## Oral Hormone Pills

Doctors often prescribe hormone pills (such as Clomid) to regulate and strengthen ovulation. Generally speaking, these pills are taken for a number of consecutive days. It is crucial that not even a single day be missed, as this could potentially ruin the pill’s effect. It is probable that someone taking these

16. *Be'er Moshe* 1:33.

17. It should be noted that R. Stern was responding to a question of *shechikat samimonim*. As mentioned earlier (based on the *Chaye Adam*), it is possible for a *bari* to also assume the status of *sakanat eiver*. Thus, although R. Stern classified the woman as a *bari*, it does not preclude him from allowing other acts to be violated under the classification of *sakanat eiver*. One cannot assume, based on R. Stern’s response, that all other violations would be prohibited based on the *bari* status.

18. Before acquiescing to a semen analysis, a rabbinic authority must be consulted, as the process can entail certain halachic prohibitions.

19. Generally speaking, the doctors prefer to schedule these tests for weekdays anyway, as weekends are reserved for timely procedures, such as IVF.

pills will need to take them on Shabbat as well.

Ingesting pills on Shabbat, and indeed any type of healing (*refuah*) (healing), was proscribed by the Rabbis (*Chazal*). In *Chazal's* time, medications were prepared by grinding different spices together. Such grinding is a violation of the prohibited Sabbath activity (*av melacha*) of *tochein* (grinding). Out of concern that one might come to grind ingredients to create a medication,<sup>20</sup> *Chazal* forbade resorting to any type of healing.<sup>21</sup> Although medications in our time usually come ready-made, the decree is still in force.<sup>22</sup> It has limitations, however; *Chazal* did not apply their stricture in cases of *bari*<sup>23</sup> or *choleh*.<sup>24</sup> Therefore, while a person assigned the status of *meichush* (slight discomfort) or *miktzat choli* (slightly ill) would not be allowed to take medication on Shabbat, it may be permitted in other cases.<sup>25</sup>

A *bari* is allowed to take medications because the concern of *Chazal* was that a sick person would be nervous about his illness and would come to violate Shabbat in a moment of panic. A healthy person who simply wants to take some form

20. See *Shabbat* 53b and Rashi, s.v. *gezeira*; *Shulchan Aruch, Orach Chaim* 328:1.

21. See *Bach*, beginning of *Orach Chaim* 328 and *Am Mordechai, Shabbat* 34:6.

22. *Tzitz Eliezer* 8:15:15:4 notes that there are still certain medications that are prepared at home and the concern of *Chazal* is therefore still relevant. See also *Ketzot Ha-Shulchan* 134:4 #2 and *Nefesh Ha-Rav*, 173.

23. *Shulchan Aruch* 328:37.

24. *Ramo* 328:37 and *Mishnah Berurah* s"v 121.

25. Some *poskim* mention that even if one is permitted take pills on Shabbat, it should ideally be done with a change (using a *shinui*). See *Birchat Banim* 10:3, *Iggerot Moshe, Orach Chaim* 3:53 (a case where he permits taking medication), *Be'er Moshe* 1:33 and *Teshuvot Ve-Hanhagot* 5:94:2. *Mishnah Berurah* 328:121 quotes *Radvaz* as saying that the requirement to use a *shinui* by *shevut* for a *choleh she-ein bo sakana* (the opinion of *Ramban* quoted above) is only applicable to *melachot de-rabbanan*, not *gezeirot de-rabbanan* (acts that were forbidden by *chazal* in order to prevent one from violating an *issur de-oraita*), like *shechikat samimonim*. According to this opinion using a *shinui* when taking medicine would be unnecessary.

of medicine for general strengthening or some other reason would be allowed to do so.

Thus, the permissibility of a woman's ingesting a hormone pill on Shabbat depends on the classifications discussed above. R. Moshe Stern, for example, suggests that a woman should ideally put the pill in water before Shabbat and drink it on Shabbat, but he notes that it is certainly acceptable to swallow the pill on Shabbat, as he considers an infertile woman a *bari*.<sup>26</sup> According to the *poskim* who consider this woman to be a *choleh she-ein bo sakanah* or as having *sakanat eiver*, she would likewise be permitted to take pills since the prohibition to grind medications does not apply to such circumstances.

Some *poskim* would allow the pills to be ingested in a regular manner as long as she had begun taking the prescription before Shabbat. This is the opinion of R. Shlomo Kluger,<sup>27</sup> which is followed by numerous *poskim*.<sup>28</sup>

One source for this opinion is the Gemara that states that one may not replace a bandage that fell off of a wound on Shabbat.<sup>29</sup> Rashi explains that this is because we are concerned that a person will smooth medicine on the wound, a Sabbath violation of the *melacha* of *memare-ach* (smoothing).<sup>30</sup> Tosafot note that Rashi was not concerned with the problem of "grinding spices" because the bandage was already on from

26. *Be'er Moshe* 1:33.

27. *Sefer Ha-Chaim, Orach Chaim* 328:37; *Kuntres Chayei Nefesh*, chapter 6, *Sh"ut She-not Chaim* 152:4 and addition to #4 at the end of the *Teshuva*. R. Kluger cites this as a "*margela be-fumei de-inshi*," a common saying.

28. See *Shemirat Shabbat Ke-Hilchata* 34:19 and nt. 76 (see also the emendation of R. Auerbach in vol. 3 of *Shemirat Shabbat Ke-Hilchata*); *Chazon Ish* (quoted in *Imrei Yosher, Mo'ed* 97, *Orchot Rabbeinu* vol. 1, #214 p. 155, *Dinim Ve-Hanhagot* 15:1); R. Yosef Shalom Elyashiv, *Kovetz Teshuvot* 1:40:2; and R. Eliezer Waldenburg, *Tzitz Eliezer* 8:15:15-17, 12:45:5-6. Az *Nidberu* 1:31:5 considers this opinion of R. Shlomo Kluger as a possible leniency to be used in combination with other possible leniencies.

29. *Eiruvin* 102b.

30. *S.v. aval*. This is also the opinion of Rosh (10:17).



the day before.<sup>31</sup> By extension, if medicine was taken before Shabbat, we are not concerned with the regulation of grinding spices. Maharsham rejects this proof, noting that there is no indication in the Gemara's case that there was medicine on the wound before Shabbat, only that the bandage was present.<sup>32</sup> A careful reading of *Sefer Hachaim* indicates that R. Kluger was aware that this proof was not absolute. However, he notes that the case of the bandage is somewhat similar to our case and the ruling seems logical, so we should accept the proof. The logic, as stated by R. Kluger, is that when one has already started taking medicine before Shabbat, they are aware that they need to prepare the medication in advance. However, someone who starts medication on Shabbat may not necessarily have been aware that any preparation was needed. Thus, there is concern that he may prepare medication on Shabbat and we are thus concerned for *shechikat samimonim*.

Another possible source for this view is a statement of Rambam, who says that on Shabbat one may not soak *chilitit*, which was used in the preparation of a medicinal drink, unless he had already done so previously on Thursday and Friday.<sup>33</sup> Similarly, any medications that were begun before Shabbat and must be taken on consecutive days may be continued on Shabbat itself. This conclusion is difficult in light of Rambam's source. The Gemara states this halacha, but stipulates that permission is granted because refraining from taking this pill would constitute danger to one's health (a *sakana*).<sup>34</sup> Although this phrasing of the Gemara is recorded in

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31. S.v. *machzirin*. It should be noted that Tosafot question the position of Rashi and conclude that there is a problem of *shechikat samimonim* in such a case. See Rosh for a defense of Rashi's view.

32. *Da'at Torah, Orach Chaim* 328:37.

33. *Hilchot Shabbat* 21:22, 22:7, according to the understanding of the *Maggid Mishnah*.

34. *Shabbat* 140a.

full by *Shulchan Aruch*,<sup>35</sup> Rambam left out the last point.<sup>36</sup> Perhaps, then, one would not be permitted to continue taking medicine on Shabbat if refraining does not constitute a matter of *sakana*.<sup>37</sup>

A third possible reason why one would be permitted to continue medications on Shabbat, if they started beforehand, is that we assume that a sick person (*choleh she-ein bo sakana*) is permitted to take medications; and *Chazal* did not apply their stricture against medicine in such a case.<sup>38</sup> Thus, a sick person or one who would be in danger (*choleh she-ein bo sakana*) or if skipping a day of medication would eventually place a person in danger, would be permitted to continue taking the medication.<sup>39</sup>

R. Mordechai Willig notes that according to this last line of reasoning, one would even be allowed to **begin** taking the

35. *Orach Chaim* 321:18.

36. *Mishnah Berurah* 321:72 notes that *Eliya Rabba* had a different text of Rambam, in which Rambam continues to say that a person may only continue to drink the *chiltit* on Shabbat if it is the manner of healthy people in that area to do so. In such a case, even though this specific person is drinking it for *refuah* purposes, he may continue to do so on Shabbat. According to this understanding of Rambam, one would not be permitted to continue taking hormone pills on Shabbat, as healthy people do not ordinarily take these pills.

37. R. Avigdor Nevenzhai, (*Be-Yitzchak Yikarei* 321:18), is strict regarding this matter in a case of non-danger, as it seems from the Gemara and *Shulchan Aruch* that this leniency should not apply.

38. This is suggested in *Halacha U-Refuah* vol. 1, p. 87-88; see also *Am Mordechai, Shabbat* 34:5. It would seem that R. Kluger did not assume this line of reasoning because he was referring to a case where the taking of medications would have otherwise been prohibited if not for the fact that the regimen started before Shabbat. *Halacha U-Refuah* rejects the sources of R. Kluger and quotes a Gemara that seems to go against him. *Halacha U-Refuah* suggests that the "*margela be-fumei de-inshi*" was not a *chiddush* in the *halachot* of *refuah*, but rather an assumption that one who must take medications for consecutive days would presumably have the status of a *choleh she-ein bo sakana*.

39. See *Aruch Ha-Shulchan* 321:45.

medication on Shabbat,<sup>40</sup> but according to the first two proofs, the medication could only be **continued** on Shabbat. This issue could be relevant if medication for ovulation must be started on a specific day of the menstrual cycle or in the case of a one-time pill.<sup>41</sup>

Other *poskim* maintain that one is not generally permitted to continue taking medication on Shabbat.<sup>42</sup> Even according to these *poskim*, however, it may still be permissible for a woman undergoing fertility treatments to continue medication depending on her status – whether as a *bari*, *choleh she-ein bo*

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40. *Am Mordechai*, *Shabbat* 34:5. In *Orchot Rabbeinu* vol. 1, #214 p. 155 (quoted above). R. Gedalyah Nadel is mentioned as having quoted the Chazon Ish that one may take a medication that needs to be taken for at least seven days (in which case it will inevitably run into Shabbat) even on Shabbat. His reasoning is because *Chazal* only forbade the taking of medication in case of someone only feeling discomfort (*meichush*). However, for someone who has a *machala* (disease), it was never forbidden by *Chazal*, even in an instance where there is no *sakana*. Chazon Ish assumed that if one must take medication over the course of many days, he would have the status of a sick person, not just one experiencing discomfort (*machala* and not merely *meichush*). R. Yaakov Yisroel Kanievski (the Steipler Gaon) relied on this opinion of the Chazon Ish. *Orchot Shabbat* vol. 2 chapter 20 fn. 180 p. 281 points out that according to this line of reasoning one should be able to start medication on Shabbat as well, not merely to continue on Shabbat. It should be noted that although this line of reasoning could help for a woman taking medications for a number of days, in a case where only one pill was necessary (for example, in the case of male infertility, discussed below) this logic would not apply.

41. See “Male Infertility” below.

42. This is the opinion of Maharsham, *Da’at Torah*, *Orach Chaim* 328:37. R. Moshe Feinstein, *Iggerot Moshe*, *Orach Chaim* 3:53, is lenient only in extenuating circumstances, such as when the patient is on the verge of a nervous breakdown. He concludes by saying that this is not usually the case. *Be’er Moshe* 1:33:7 writes that he thinks it should be forbidden to continue medication on Shabbat, despite rumors that R. Shlomo Kluger was lenient (he did not have access to R. Kluger’s *Sefer Ha-Chaim*). Although he agrees with Maharsham, *Be’er Moshe* concedes that R. Kluger’s opinion can be relied upon if one must be lenient. See also *Avnei Yashfeh* 1:90:3; *Shraga Ha-Me’ir* 2:40; *Emek Halacha* 24; *Ohr Le-Tzion* 2:36:9; and *Be-Yitzchak Yikarei* 321:18, who all take stringent views.

*sakana* or *sakanat eiver.*, in which case the *gezeira* of *shechikas samimonim* would not apply.

## Injections

A doctor may prescribe hormone injections (such as Menagon, Pergona, and Gonal-F) for a few days in order to regulate and/or strengthen ovulation.<sup>43</sup> There are number of issues involved with receiving injections on Shabbat.

## Causing Bleeding

Even if the injection is subcutaneous and not meant to enter into any blood vessels, it may cause bleeding and thus potentially violate an *issur de-oraita* (see “Blood Tests” later on). Because the goal of the injection is not to cause blood, such causation of blood would be deemed a *melacha she-eino tzericha le-gufa*.<sup>44</sup> If the injection were intramuscular, it would be considered a *pesik reisha*, as bleeding would almost certainly result, but it would be deemed “*lo neicha lei*” because one certainly does not care for the blood.<sup>45</sup> As such, causing bleeding through an injection is only rabbinically prohibited<sup>46</sup> and would therefore be permitted in a case of *choleh she-ein bo sakana* or *sakanat eiver*.<sup>47</sup> If we would consider this woman a

43. A doctor may also prescribe an injection in order to time ovulation within a specific window of time (HCG). This will be discussed below.

44. See Rashi *Shabbat* 93b s.v. *V'Rabi Shimon*.

45. See *Le-Torah Ve-Horaah* vol. 9, p. 13, where R. Elimelech Bluth quotes R. Moshe Feinstein to this effect.

46. Tosafot *Shabbat* 103a s.v. *lo*; *Shulchan Aruch* 320:18 and *Mishnah Berurah* s”k 53. The *Aruch* (quoted in Tosafot) however, maintains that a *pesik reisha de-lo neicha lei* is *muttar*.

47. It should be noted that R. Moshe is quoted as allowing the injections, which are thus violating a rabbinic prohibition for a *choleh she-ein bo sakana*, even without using a *shinui*. This seems to be against the accepted approach, quoted above, that one must use a *shinui* in such a case. He permits it because it would be impractical to give injections with a modification and would thus be impossible any other way. *Chaye Adam* (69:12) writes that in a

*bari* then we would not allow a rabbinic prohibition to be violated.

## Attaching the Syringe

If the syringe used for injection is disposable, it must be attached to the needle, potentially causing a problem of *boneh* (building) when attached to the needle for use and *soter* (destroying), if it is destroyed after use.<sup>48</sup> Most *poskim* assume that attaching a disposable syringe is permitted on Shabbat because it is made for a one-time use and is therefore not meant to last. Temporary *binyan* (“building”) is forbidden only rabbinically,<sup>49</sup> and would therefore be permitted (with a *shinui*) for a sick person, *choleh she-ein bo sakana*. According to the opinion that considers this woman as having *sakanat eiver*, even a *shinui* would not be required. However, if she were given the status of *bari* – healthy – then we would not allow any rabbinic prohibitions to be violated.

Ideally, the syringe with the medication should be attached before Shabbat. If that is not possible (based on the doctor’s

case where a non-Jew is unavailable and it is impossible to do the act without a *shinui*, the rabbinic prohibition may be violated for a *choleh she-ein bo sakana* in the regular manner.

48. Another potential problem, although not related to the treatment itself, is that of applying an alcohol swab to the area that will be injected. This could potentially involve a problem of *sechita* (squeezing), as well as problems with opening the package. Regarding the packaging, it is recommended to tear it at a place that will not rip through letters (which could violate *mocheik*, erasing). Since the packaging will be destroyed by tearing it, it is considered destructive and therefore permissible on Shabbat (*Shemirat Shabbat Ke-Hilchata* 9:12).

49. See *Shulchan Aruch, Orach Chaim* 313:6; *Mishnah Berurahh, Orach Chaim* 313:6:46; *Shemirat Shabbat Ke-Hilchata* 33:9 and nt. 43, vol. 3 35:63; *Minchat Shlomo* 2:19; *Tzitz Eliezer* 13:46, 14:27:5, 15:17, 16:15; *Minchat Yitzchak* 8:27; *Yechaveh Da’at* 2:56; *Teshuvot* of R. Shlomo Zalman Auerbach and R. Yitzchak Weiss printed at the end of *Nishmat Avraham, Orach Chaim; Shalmei Nissan, Perek Eilu Kesharim*, p. 115; *Ben Ish Chai*, year 2, *Parshat Vayakhel* 5. See, however, *Ohr Le-Tzion* 2:36:19, who forbids attaching syringes.

assessment), it is permitted to attach the syringe on Shabbat. One should do so with the intention of detaching it after usage. After administering the injection, the syringe should be detached before being discarded.<sup>50</sup> The reason for this is that it confirms its status as only a temporary “building”. Moreover, Tosafot (*Shabbat* 102a s.v. *hy*) note that the rule of *ein binyan be-keilim* applies to cases where the utensil does not require a professional for assembly. Detaching the syringe shows that it does not require a professional and therefore we can apply the principle of *ein binyan be-keilim*.

### Mixing Powder and Liquid

Injectable medications come in two forms. In some instances, a small glass bottle with a rubber top is used (similar to insulin bottles). In such a case, the syringe pierces the rubber top to draw out the medication inside the bottle. In other cases, a small glass container with powder inside is snapped off at the top, and the powder inside is mixed with a liquid solution before being drawn into the syringe.

Mixing powder and liquid together may potentially run into the prohibition of *losh* (kneading). However, *Chazon Ish* writes that as long as there is significantly more water than powder in the mixture, there is no concern, as *losh* does not apply when there is an abundance of water.<sup>51</sup> In addition, *losh* does not apply when the powder dissolves and is no longer noticeable.<sup>52</sup>

### Making a *Petach* in the Body

In the course of an injection, a needle inevitably creates a

50. *Tzitz Eliezer* 15:17. See *Birchat Banim* 10:19 and nt. 29.

51. *Chazon Ish, Orach Chaim* 58:9, s.v. 156a, s.v. *u-mani*.

52. See *Iggerot Moshe, Orach Chaim* 4:74, *Losh* #1, where R. Feinstein argues that it is permitted to dissolve powdered cocoa in a drink without a problem of *losh*, similar to dissolving sugar in a drink.

hole (*petach*) in the body. Creating a *petach* (opening) is a violation of the forbidden Sabbath activity of *makeh bi-patish*.<sup>53</sup> R. Moshe Feinstein is quoted as maintaining that an injection only constitutes a *petach* on a rabbinic, not biblical level, as it is only made to enter, not to exit.<sup>54</sup> It is therefore permitted when dealing with a *choleh she-ein bo sakana* (see note 47) or *sakanat eiver*. But if this woman would be given the status of *bari*, then the creation of a *petach* would potentially pose a problem.

### Who Should Administer Injections?

Given the numerous issues that result from injections on Shabbat, they should ideally be administered by a non-Jew.<sup>55</sup> But R. Yosef Shalom Elyashiv is quoted as saying that a Jew may administer injections for fertility treatments.<sup>56</sup>

### Timing of the Injections

Doctors recommend that injections be administered around the same time every day. If one plans in advance to receive the injections around the time of *shekiat ha-chama* (sunset), Shabbat issues can be avoided; one injection can be taken around the time of candle-lighting on Friday afternoon and another injection can be received immediately after the conclusion of Shabbat.<sup>57</sup>

53. See *Shulchan Aruch, Orach Chaim* 328:28.

54. *Le-Torah Ve-Hora'ah* vol. 9, p. 13.

55. It is ideal to minimize the violation, as *pikuach nefesh* (saving a life) on Shabbat is *dechuya*. See Rambam *Hilchot Shabbat* 2:1, *Sh"ut* Rashba vol. 1 #689, *Ran Beitza* 9b *Dapei Ha-Rif* s.v. *u'miha*. See, however, *Rosh Yoma* 8:14 who quotes the opinion of *Maharam Me-Rottenburg* who assumes that Shabbat is *hutra* for *pikuach nefesh*. See *Mishnah Berurah* 328:39.

56. R. Yisroel Pinchas Bodner, *Halachos of Refuah on Shabbos* (Feldheim Publishers), 339 nt. 1. It is unclear from the reference whether one should ideally seek out a non-Jew or if one can simply allow a Jew to administer the injection.

57. *Birchat Banim* 10:18. See also, *Orchot Rabbeinu* vol. 1 # 217, p. 156 in the name of the Chazon Ish. This will only work for medications that are taken

## HCG (Human Chorionic Gonadotropin) Injections

HCG is a hormone that, when administered when one or more mature follicles are present, produces ovulation thirty-six hours later. This allows the doctor to remove a mature egg and ready it for fertilization. There is generally around a two-hour timeframe in which the eggs can be extracted for fertilization.

HCG was originally intended to be an intra-muscular injection, which almost always causes bleeding. As noted above, R. Moshe Feinstein is quoted as saying that this is not a problem on Shabbat because it is a *pesik reisha de-lo nicha lei*, which is only rabbinically prohibited and therefore permitted for a *choleh she-ein bo sakana* or *sakanat eiver*.<sup>58</sup> According to those who consider this woman a *bari*, any causation of bleeding would be problematic.

Recent studies have shown that this injection can be administered subcutaneously without losing its potency.<sup>59</sup> If done in this manner, the injection does not necessarily cause bleeding and therefore would be a preferable solution, so as not to violate an *issur de-rabbanan*.

## In-Vitro Fertilization (IVF)

In-Vitro Fertilization involves the removal of a healthy egg from the woman, which is then fertilized outside the womb.

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for at least a few days. HCG is a timely injection that must be taken at a very specific time, and this suggestion will therefore not help. Dr. Abraham S. Abraham, *Assia* 55 (*Tevet*, 5755): 42, assumes that it would be forbidden to receive an injection that is administered over the course of a few days, on Shabbat, since it is possible to do before Shabbat. He assumes that it would only be permitted in a case of the two days of Rosh Hashana or when Yom Tov falls out on a Friday or Sunday.

58. *Le-Torah Ve-Hora'ah* vol. 9, p. 13.

59. See James R. Stelling, et. al., "Subcutaneous versus intramuscular administration of human chorionic gonadotropin during an in vitro fertilization cycle," in *Fertility and Sterility* 79:4 (April, 2003): 881-885.



This process has been discussed extensively by the *poskim*. Relevant for our discussion are the parts of the process that may need to be performed on Shabbat.<sup>60</sup> In addition to the HCG injection discussed above, the woman must check for the time of her ovulation and the husband's semen must be purified so that only viable sperm will be used to fertilize the egg.

In any round of fertility treatment, the doctor will test the woman to examine the status of eggs and how close she is to ovulation. Treatment will depend on these results. There are three ways to monitor ovulation: BBT (basal body temperature), home ovulation-testing kits, and blood work with ultrasounds.

## BBT

By monitoring a woman's temperature at different points during the day, it is possible to determine if and when she ovulates.<sup>61</sup>

Checking temperature on Shabbat could be problematic because it is a form of measuring.<sup>62</sup>

*Poskim* mention three possible reasons why it would be permissible to use a thermometer to determine basal body temperature on Shabbat, despite the prohibition against

60. With careful planning before the commencement of the cycle, it is almost always possible to avoid the actual performance of the IVF procedure on Shabbat. Doctors can usually tweak the shots so that the eggs will be ready within a certain time frame. See below for our discussion about choosing a doctor. See also Richard V. Grazi, "Halachic Dilemmas of the Process of IVF," in *Medicine and Jewish Law III* (Yashar Books Inc.), 35. Dr. Grazi mentions that transference of embryos during the IVF process achieves the same results on days two and three, so transference of embryos can always be done on a day other than Shabbat.

61. Nowadays, this form of monitoring is generally not used by doctors, but rather by couples themselves before they seek medical assistance.

62. *Shulchan Aruch* 323:1.

measuring.<sup>63</sup>

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63. This leniency would only apply to a mercury thermometer, not a digital one. The reason is because digital thermometers involve other possible prohibitions, such as the LED display, which could involve *koteiv* (perhaps only *de-rabbonon* because it displays a temporary reading) and the use of batteries, which according to many *poskim* involves a rabbinic prohibition. In general, we try to minimize the amount of violations that are necessary. As such, a mercury thermometer would be recommended unless it is not available.

Using a thermometer on Shabbat may entail other prohibitions as well. For example, there could be a problem with shaking down the thermometer. *Shevet Ha-Levi* (1:61) and *Le-Horot Nattan* (5:19) assume that this constitutes *makeh be-patish*, as it prepares the thermometer for use. (R. Gestetner suggests placing the thermometer in cold water to cool down the temperature. He assumes, based on Rashi, *Shabbat* 74b, s.v. *tanur*, that *makeh be-patish* is only violated if the result happens immediately. Placing the thermometer into cold water would gradually move the temperature down.) R. Shlomo Zalman Auerbach (*Shemirat Shabbat Ke-Hilchata* ch. 40, nt. 7), R. Yosef Shalom Elyashiv (*Kovetz Teshuvot* 1:40:3), R. Menashe Klein (*Mishneh Halachot* 4:49), R. Moshe Stern (*Be'er Moshe* 6:56) and R. Binyomin Zilber (*Az Nidberu* 1:62, 4:35) assume that there is no problem of *makeh be-patish* in shaking down a thermometer.

When inserting the thermometer in the rectum, one ideally should not use vaseline to ease insertion, as this could be a problem of *memare'ach*. If possible, it is better to dip the thermometer in baby oil. If not possible, R. Shlomo Zalman Auerbach (*Shemirat Shabbat Ke-Hilchata* 40:2 and nt. 5; *Shulchan Shlomo, Erchei Refuah* vol. 2, p. 143; *Orchot Shabbat* vol. 2, 20:167) permits the use of vaseline as long as it is not applied directly on the thermometer.

When cleaning off the thermometer, one should preferably not use alcohol swabs, as this could entail *sechita* (squeezing). Likewise, one should not dip a piece of gauze or cotton into alcohol. Instead, one should dip the thermometer into alcohol and wipe it off with a gauze pad or cotton ball (*Shemirat Shabbat Ke-Hilchata* 40:2 and nt. 5; *Orchot Shabbat* vol. 2, 20:168; see also R. Bodner, *Laws of Refuah on Shabbos*, 356). When finished with the thermometer, one should not clean it again unless one plans to re-use it on Shabbat.

R. Moshe Shternbuch (*Teshuvot Ve-Hanhagot* 1:207, *azharot bishul* #3) prohibits the use of mercury thermometers on the grounds that if the temperature rises, it can cook the mercury inside the thermometer. Since this is the way the thermometer is meant to be used, it would constitute *bishul* (cooking). He concedes that in a case of great need, *sha'at ha-dechak*, one need not be strict. *Minchat Yitzchak* (3:142, 10:31:8) also mentions this concern

First, the Gemara notes that although it is forbidden to measure on Shabbat, it is permitted in a case of a mitzvah,<sup>64</sup> and Rambam<sup>65</sup> and *Shulchan Aruch*<sup>66</sup> record this as the halacha. A case of a couple trying to conceive is considered one of a mitzvah, and measuring would therefore be permitted.<sup>67</sup>

Second, many *poskim* assume that using a thermometer is not even considered measuring. Tosafot are of the opinion that measuring is prohibited because it is an ordinary weekday activity associated with weighing; items are weighed before sale.<sup>68</sup> Since a thermometer is used to check a person's temperature and has nothing to do with measuring items to be sold, it is not considered an ordinary weekday activity and is

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(although he writes that he did not have time to properly contemplate the issue). *Chelkat Yaakov* (*Orach Chaim* 151:3) writes that he spoke to a physicist who explained how a mercury thermometer works; his findings were that the mercury is not cooked by a raised temperature but it is rather spread out in the thermometer. As such, there would be no problem of *bishul*. *Sh"ut Mahari Shteif* (123) is also lenient regarding this issue. His reasoning is that the temperature on the thermometer cannot become high enough to cook anything. He also notes that this cooking would not be comparable to cooking in the *Mishkan*, as they never used human heat to cook in the *Mishkan*. R. Shlomo Zalman Auerebach (*Shemirat Shabbat Ke-Hilchata* 40:2, nt. 3) agrees with the notion that the temperature does not reach high enough to cook anything and adds that human heat is like *chamah*, not *ohr*. See *Nishmat Shabbat* 5:336.

*Chelkat Yaakov* (*Orach Chaim* 151:4) notes that since there is a permissible use for the thermometer, it is not *muktza* even after its use. This is also the opinion of R. Shlomo Zalman Auerbach (*Shemirat Shabbat Ke-Hilchata* 40:2, nt. 3).

64. *Shabbat* 157a.

65. *Hilchot Shabbat* 24:5.

66. *Orach Chaim* 306:7.

67. *Be'er Moshe* 6:56, *Chelkat Yaakov*, *Orach Chaim* 150.

68. *Mishnah Berurah* 306:34 cites *Magen Avraham Orach Chaim* 306:16, who quotes this opinion as the halacha. Rambam (*Hilchot Shabbat* 23:13) seems to assume that measuring is forbidden because it is used in business dealings; one who measures might write things down and perform business transactions. See Rashi *Beitza* 29a s.v. *ve-ata*.

therefore permitted on Shabbat.<sup>69</sup>

Finally, *Tzitz Eliezer* assumes that using a thermometer is not considered measuring because the person only places the thermometer in a certain place and it is the thermometer which checks the temperature. You therefore only cause the temperature to be taken, but do not actually measure anything yourself.<sup>70</sup>

## Home Ovulation-Testing Kits

Home ovulation-testing kits contain a strip that the woman dips into her urine. If it turns a certain color, she knows that she has ovulated. The potential problem involved with this procedure on Shabbat is the Sabbath prohibition of *tzoveya* (coloring).<sup>71</sup>

69. This is the opinion of R. Shlomo Zalman Auerbach, (*Me'orei Aish*, 66; *Shemirat Shabbat Ke-Hilchata* vol. 1, 40:2, nts. 2, 3), R. Moshe Feinstein (*Iggerot Moshe* 1:128), R. Eliezer Waldenburg (*Tzitz Eliezer* 3:10, 11:38, 12:44:5), R. Yitzchak Weiss (*Minchat Yitzchak* 3:142), R. Moshe Stern (*Be'er Moshe* 2:22:1, 4, 6:56), and R. Shmuel Vosner (*Shevet Ha-Levi* 1:61). See also *Minchat Yitzchak* 7:22 and *Kinyan Torah* 3:39.

70. *Tzitz Eliezer* 3:10.

71. The *poskim* discuss a similar strip that is used as a thermometer. There are two different types of these thermometers; one is a strip that changes colors when it reaches certain ranges, and the other displays a number reading. *Shemirat Shabbat Ke-Hilchata*, ch. 40, nt. 8, cites R. Shlomo Zalman Auerbach, who argues that permissibility depends on whether the letters or colors are already present on the strip and just become more visible or if they are not there at all and use of the strip makes them visible. *Be'er Moshe* (vol. 6, *Kuntres Electric* #77) writes that it is preferable to use a mercury thermometer on Shabbat, as opposed to one of these strips, but *bedieved* these strips would be permissible because they only entail a temporary coloring in an indirect manner. He also notes that a mercury thermometer is better from a medical standpoint because it gives a more accurate reading. In the case of the home ovulation-testing kit and the BBT method, the opposite is true, as home ovulation-testing kits are more accurate.

*Tzitz Eliezer* (14:30, 31) differentiates between these two types of strips. Strips that only change color are permitted. If writing appears on the strip (for example, the number of the temperature), then it is permissible for use only if the writing was visible beforehand and now simply became darker.

Some *poskim* permit use of these strips.<sup>72</sup> *Tzitz Eliezer* gives a few reasons for the leniency:

First, the coloring of the strip is not the desired result. The person who takes such a test is not interested in the coloring but rather in finding out the results of the test. Thus, it is not comparable to the coloring that was done in the Tabernacle in the desert, where the colors themselves were the desired result.

Another possible reason to be lenient is the amount of substance which is prohibited to color on Shabbat. The Mishnah writes that the amount is a four-*tefach* string,<sup>73</sup> which is more than the amount of the strip that is colored in this case.

A third reason that use of these strips should be permitted is that the coloration is temporary; soon after use, the strip reverts back to its original status.<sup>74</sup>

## Ultrasound

Ultrasounds are used to check follicle size. Based on the size of the follicles, the doctor can determine if ovulation has occurred, or when the projected time of ovulation is, as well as the number of mature eggs that will be available that month.

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However, if the numbers only became visible during its use, it would be prohibited to use on Shabbat because of *koteiv* (writing). The strips that are used in ovulation kits usually only produce coloring, not writing, and would therefore be permissible according to *Tzitz Eliezer*. *She'arim Metzuyanim Be-Halacha* (91:11, *Kuntres Acharon*) is also lenient in this matter for many of the above reasons. See also *Yechaveh Da'at* 4:29; *Machazeh Eliyahu* 65-66; *Nishmat Shabbat* 5:339.

72. See *Shemirat Shabbat Ke-Hilchata* 33:20 and nt. 83; *Tzitz Eliezer* 10:25; *Be'er Moshe* 8:24:16. R. Shlomo Zalman Auerbach suggests placing only the edge of the test strip near the urine and allowing the urine to diffuse through the stick on its own, thereby only indirectly causing the stick to change colors.

73. *Shabbat* 105b. See Rambam, *Hilchot Shabbat* 9:13.

74. See Rambam, *Hilchot Shabbat* 9:13; *Magen Avraham* 320:25, and *Machatzit Ha-Shekel* *ibid*.

An ultrasound is performed using machinery that runs on electricity. There is a debate among the *poskim* whether the prohibition of using electricity on Shabbat is rabbinic or biblical in origin.<sup>75</sup> According to the *poskim* who assume that using electricity on Shabbat is *de-oraita*, all machinery should be operated by a non-Jew (according to those *poskim* who assume that the woman has a status of *sakanat eiver* or *choleh she-ein bo sakana*; however, if she were considered a *bari*, then this act would be forbidden even when done by a non-Jew). According to those who maintain that using electricity on Shabbat is *de-rabbanan*, then it would depend on her classification. If she were given the status of *sakanat eiver*, then a Jew would be able to operate the machinery. If she has the status of *choleh she-ein bo sakana*, then a Jew would be allowed to operate the machinery with a modification. Once again, if she is considered a *bari*, then machinery may not be operated on her behalf. In any event, a rabbinic authority should be consulted.

## Blood Tests

The most accurate way to determine time of ovulation is through blood tests (to check for a surge of the LH hormone). Drawing blood on Shabbat is a violation of a biblical prohibition.<sup>76</sup> There are three opinions among the *Rishonim* as to the exact nature of the transgression. Most *Rishonim*<sup>77</sup> assume that it is prohibited because of *netilat neshama*, a *toldah* of the *melacha* of *shochet* (slaughtering). According to

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75. See, for example, *Chazon Ish*, *Orach Chaim* 50:9, *Minchat Shlomo* 1:11. See "The Use of Electricity on Shabbat and Yom Tov," *Journal of Halacha & Contemporary Society*, No. XXI, Spring 1991, p. 4.

76. See *Bi'ur Halacha* 316:8, s.v. *ve-ha-chovel*.

77. Rashi (*Shabbat* 107a, s.v. *ve-ha-chovel*, second opinion), Tosafot (*Ibid.*, s.v. *shmoneh*; *Shabbat* 75b, s.v. *ki*; *Ketubot* 5b, s.v. *dam*), Rashba (*Shabbat* 107a, s.v. *ha-tzadan*), Ritva (*Ibid.*, s.v. *matnitin shemoneh*), Ramban (*Ibid.*, s.v. *matnitin shemoneh*) and Ran (*Shabbat* 38b in the *dapei ha-Rif*).

Rambam,<sup>78</sup> it constitutes *mefarek*, a *toldah* of *dosh* (threshing). According to Rashi,<sup>79</sup> it is *tzoveya*.<sup>80</sup>

Because the blood itself is desired in order to test it, the act of drawing the blood is a *melacha ha-tzericha le-gufa*.<sup>81</sup> It is not permitted to perform a biblical prohibition for a person who is a *sakanat eiver*, *choleh she-ein bo sakana*, or *bari*. Therefore, according to all opinions, testing blood for ovulation is prohibited on Shabbat.<sup>82</sup>

A question that may arise is whether a non-Jew would be able to draw the blood or perform the ultrasound. The reason to permit such an act is because it is instructing a non-Jew to perform a forbidden action for the Jew on Shabbat, *amirah le-nochri*, which, depending on the classification of the woman, could perhaps be permitted on Shabbat. The reason that it might be halachically problematic is because the woman is in some way aiding (*mesayeya*) the technician or doctor in drawing the blood or performing the ultrasound.

There seems to be a contradiction in the Gemara regarding the issue of *mesayeya*. The Gemara in *Makkot* 20b, in the case of *makif* and *nikaf* (cutting the hair), assumes that *mesayeya yesh bo mamash*, it is considered playing a significant enough role in the process so that one is held accountable for the action. The Gemara in *Beitza* 22a (a case of allowing a non-Jew to put drops in one's eye), however, assumes that *mesayeya ein bo*

78. *Hilchot Shabbat* 8:7.

79. *Shabbat* 107a, s.v. *ve-ha-chovel*, first opinion.

80. A difference between these opinions is that according to Rambam (*dosh*) and Rashi (*tzoveya*), there is a minimum *shi'ur* required in order to violate the *de-oraita* prohibition. The minimum *shi'ur* required to violate the *av melacha* of *dosh* is the size of a *grogeret* (Rambam *ibid*). The minimum *shi'ur* for *tzoveya* is the size of a four-*tefach* string (*Shabbat* 105b). According to the other *Rishonim*, however, any amount of blood drawn would violate the *melacha* of *netilat neshama*.

81. *Ohr Le-Tzion* vol. 2, 36:21.

82. See *Birchat Banim* 10:8. Thus, a couple would have to wait until the next month to resume fertility treatments. See *Birchat Banim* nt. 12 *ibid*.

*mamash*, it is not considered playing a significant role in the action. In trying to resolve this contradiction, *Shach*<sup>83</sup> assumes that the opinion that we say *mesayeya* is not significant is normative, and the case of hair cutting is an exception.<sup>84</sup> *Taz*<sup>85</sup> assumes a split decision – if one helps in the beginning of the act (as in the haircutting case in the Gemara then they are considered to have played a significant role in the action. However, if they didn't help in the initial stage of the act (like the case of the eyes, where the person's eyes are already open and he only helps out by blinking after the drops are already in the eyes) then we assume that helping is not significant.

Regarding ultrasound and blood tests, the woman does help out at the beginning of the action, and thus it would seem that according to the *Taz* there is a problem of *mesayeya*. It would seem that our issue is dependent on this rabbinic dispute. With careful planning, the need for blood tests on Shabbat can and should be avoided. In case of great need a rabbinic authority should be consulted.<sup>86</sup>

### Purifying Semen

Before the fertilization process, a semen sample from the husband must first be purified to discard any inactive cells and seminal fluid. The semen is prepared for fertilization by placing it in a centrifuge and density gradient, which removes everything except the healthy, viable sperm to be used in the fertilization process. The centrifuge runs on electricity and therefore would depend on the issue cited above by ultrasound. In case of need, a rabbinic authority should be

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83. *Nekudot Ha-keseif Yoreh Deah* 198:21. See also *Shach* 198:25, *Ritva Makkot* 20b s.v. *Be-mesayeya*.

84. Because of a *gezeirat hakatuv*.

85. *Orach Chaim* 328:1; *Yoreh Deah* 198:21. See also *Magen Avraham* 328:16, *Rebbi Akiva Eiger* *ibid.*, and *Chatam Sofer* *beg. Orach Chaim* 328.

86. See *Halachos of Refuah on Shabbat*, Bodner, p. 51, *Sh"ut Nishmat Shabbat* 5:432, *Techumin* (vol. 23, p. 222).



consulted.<sup>87</sup>

Another halachic issue that may arise regarding the centrifuge and density gradient is whether or not this violates the act of *borer* (separating). Ostensibly, the healthy viable sperm cells are separated from the inactive or dead sperm cells, which could be *borer*.

A centrifuge is a machine that spins around at extremely high speeds. As the sperm mixture is spun, sperm cells fall to the bottom of the test tube, producing a mass of dense, highly active sperm. The use of the centrifuge would seem to cause a separation between the sperm and anything else which can interfere with the effectiveness of the healthy sperm (such as seminal fluid, dead sperm cells, etc.).

Density gradient is a test tube that is filled with multiple layers of liquids of different densities. The sperm sample is placed at one end of the layer of liquid and the test tube is spun in a centrifuge. After it is spun, the active, healthy sperm will make their way through the layers of liquid in the test tube, while the inactive or dead sperm will get caught in the liquid layers. These layers can be removed in order to obtain the active sperm from the test tube. It would seem that the density gradient is not *borer*, as the separation happens as a result of the healthy sperm swimming on their own through the layers of density.

As a result of the issue of *borer* regarding the centrifuge (which involves a Sabbath prohibition on a biblical level), we would allow a non-Jew to operate the machinery for a *choleh she-ein bo sakana* or for a *sakanat eiver*. However, this process would not be allowed for a woman if she were given the status of *bari*.

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87. This issue would be more complicated in Israel, where many, if not most technicians in fertility labs are Jewish.

## Intrauterine Insemination (IUI)

IUI is a process wherein the sperm sample is collected from the man and injected into the woman's uterus so that when ovulation does occur, fertilization can take place with as few obstacles as possible. Due to the life span of the sperm, there is a larger window of time for IUI. If ovulation takes place on Shabbat, it is possible to perform the IUI on Friday. If ovulation is on Sunday, the IUI can be performed on Sunday. As such, it should never be necessary to perform IUI on Shabbat. Therefore, one is not allowed to violate any laws of Shabbat in order to perform it.<sup>88</sup>

## Male Infertility

If the difficulty in conceiving is due to the husband's sperm count, the protocol is usually IVF. Other possibilities include procedures such as varicocele removal, which should not be scheduled on Shabbat. Generally, this is not a concern because it is not a time-bound procedure; doctors generally schedule these procedures for weekdays.

In certain instances, the husband may take medication, such as Viagra, to promote fertility.<sup>89</sup> R. Shmuel Wosner forbade a husband from receiving injections on Shabbat before marital relations.<sup>90</sup> However, R. Wosner is quoted as saying that taking pills would be permissible for these purposes because the rabbinic stricture against medication on the Sabbath is overridden by the mitzvah of *onah* (marital relations) and certainly by the mitzvah to have children.<sup>91</sup> R. Elyashiv is

88. See "Choosing a Doctor" later in this article.

89. See Rabbi Yoel Catane, *Assia*, Nisan 5764 and Rabbi J. David Bleich, *Tradition* 41:4, Winter 2008, for discussions about the permissibility of taking Viagra on Shabbat.

90. *Shevet Ha-Levi* 8:287, see also 9:67.

91. *Halachos of Refuah on Shabbos*, 341-2. *Minchat Yitzchak* 1:108 writes that taking pills to allow the fulfillment of marital relations on the *mikvah* night is permissible on Shabbat. See *Nishmat Shabbat* 5:382:2. In commenting on the

quoted as saying that these pills may be taken only if they were started before Shabbat and are just continuing on Shabbat, as discussed above. Taking a one-time pill would thus be prohibited.<sup>92</sup>

In December 2003, the FDA approved a new drug called Cialis, a competitor to Viagra. One of the advantages of this pill is that its effects last up to thirty-six hours, as opposed to those of Viagra, which last only four. This pill could be taken before Shabbat, thus avoiding all related halachic issues. Of course, one must consult with a doctor before deciding which pill is more appropriate. From a purely halachic perspective, it would seem that Cialis is the better choice.

## Choosing a Doctor

Choosing a fertility doctor entails a number of factors. Location is very important for fertility treatments, as any sperm sample that is brought to the doctor must be delivered within a short time after its emission. It is also important to use a doctor whom the couple feels comfortable with. Obviously, it is also recommended to seek the best doctors available.

One important factor that can play a role in fertility treatment is the ability to work with a religiously observant, God-fearing doctor. If this is not possible, it is important to ensure that the doctor is sensitive to religious observance. The advantages of using an observant doctor are sensitivity to Jewish marital laws and appreciation of religious limitations on fertility treatments. It is usually easier to explain oneself to

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opinion of the *Minchat Yitzchak*, *Tzitz Eliezer* 8:15:15:14 writes that this halacha is not unique to the *mikvah* night but applies any time that the couple wants to have relations.

92. See, however, "Taking Hormone Pills Orally", above, in the name of *Halacha U-Refuah*. According to this explanation, if the man also has a status of *sakanat eiver*, *choleh she-ein bo sakana* or *bari* when taking medicine for fertility treatments, it would be permissible anyway.

a religious doctor who shares these sensitivities. For example, some doctors have a protocol to perform IUI on the day of ovulation. If that day falls on Shabbat, they may insist that it be done that day. It would be easier to deal with an observant Orthodox doctor who understands that since it is medically acceptable to perform IUI on Friday in such a case, Shabbat cannot be violated. With careful planning from before the cycle starts, even IVF can almost always be avoided on Shabbat. Not every doctor is willing to accommodate such requests. For this reason (and others), Rabbis generally recommend using observant doctors when possible.<sup>93</sup>

## Conclusion

Modern medicine has given hope and opportunity to couples who even thirty years ago might never have been able to conceive. This is a gift from G-d that has been bestowed upon our generation. It is up to us to show Him that we appreciate this gift and will only use it only in accordance with halacha. In this merit, may He continue to shower us with His kindness.

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93. See *Birchat Banim* 9:20 and nt. 38; R. Binyomin Forst, *The Laws of Niddah*, vol 1 (Artscroll – Mesorah) 422, 437, *Piskei Teshuvot Hilchot Shabbat* 328:9 and letter from R. Menashe Klein printed in back of *Piskei Teshuvot Hilchot Shabbat*, p. 256.