

From the Rabbi's Desk: Making It Up

Question:

Dear Rabbi Sprung,

I work in the hospital emergency room. I try to find the time to *Daven*, but I don't always manage to due to the intense nature of the work. This is especially common in the winter when the amount of time to *Daven* Mincha is limited. I know that when I am involved in the Mitzva of *Pikuach Nefesh* I am exempt from Tefila if I cannot *Daven*, but I wonder if I must *Daven Ma'ariv* twice in this situation.

Answer:

- 1) As a rule, a doctor who works hospital shifts must find time to *Daven* and perform the Mitzvos so that he does not neglect them regularly.
- 2) However, when he is working he is exempt from Tefila because "*haOsek b'Mitzva Patur Min haMitzva*".
- 3) If his shift began after the start of the *Zman Tefila* and he was unable to *Daven* during the shift, he must *Daven* the next Tefila twice as *Tashlumin*. This is because he had time to *Daven* before his shift.
- 4) If he had worked continually throughout the *Zman Tefila*, he is exempt from *Tashlumin*. However, it is correct for him to *Daven* an additional Tefila as a *Nedava* (and to add something to the Tefila).

Full Answer:

"A person involved in one Mitzva is exempt from another" (*Sukka* 25a). As you implied, this exemption only applies when a person cannot *Daven*, but if he can make the time to *Daven* he must do so. This is especially true for a doctor who works consistently throughout the year and, if he is not careful, may end up neglecting a Mitzva regularly (*Poskim* including *haGaon Rav Asher Weiss Shlit"a*, citing the *Birkei Yosef* O.C. 38). It is clear from experience that it is possible for busy doctors to either set up a fixed time or make time during their shifts to *Daven*.

However, as you pointed out, the work in the emergency room is extremely intense and doctors can be on the move for hours dealing with patients. Commonly, those working in that environment will not be able to find the time to *Daven* and they would absolutely be considered *Oskim b'Mitzva*.

Your question regarding *Tashlumin* is an interesting one. The answer depends on the underlying principle of the exemption of an *Osek b'Mitzva*.

The *Shulchan Aruch* delineates the principles of *Tefilas Tashlumin* (O.C. 108):

If a person erred or was Anus and did not Daven Shacharis, he should Daven Mincha twice; the first as Mincha and the second as Tashlumin... If he erred and did not Daven Mincha, he should Daven Ma'ariv twice; the first as Ma'ariv and the second as Tashlumin... If he willfully did not Daven one of the Tefilos, he cannot Daven Tashlumin even at the subsequent Tefila. If he wants to, he may Daven [the Tefila that he missed] as a Nedava.

In other words, only someone who was in a situation of *Ones*, such as illness or inebriation (*Mishna Berura* 2), or someone who erred in thinking that he had already Davened (*Biur Halacha* s.v. "Ta'ah") may Daven Tashlumin. The *Shulchan Aruch* (8) also includes one who thought he would Daven later within the *Zman Tefila* but subsequently forgot. He cannot be considered a willful transgressor since he had ultimately intended to Daven (*Mishna Berura* 23).

At any rate, the obligation of *Tashlumin* only applies to a person who was obligated to Daven but failed to do so. In this case, if it was a willful transgression he may not Daven Tashlumin, whereas in all other cases, he must Daven the next *Tefila* twice. However, regarding a person involved in communal matters, the *Mishna Berura* (93:8) rules that he need not interrupt for *Tefila*: "He need not Daven Mincha twice as Tashlumin for Shacharis. Since he was exempt at the time of the obligation, *min haDin* he does not require Tashlumin at all". (He also states this in 106:3.)

In *Sha'ar haTziyun* (*ad. loc.*) he notes that this is subject to a *Machlokes Acharonim*:

The *Shulchan Aruch* rules (Y.D. 341:2):

If a person's relative died on Shabbos, he should eat on Motza'ei Shabbos without making Havdala. He should neither Daven [that night] nor in the morning before the burial. After the burial, he should Daven Shacharis if its Zman has not passed. But he should not Daven Ma'ariv [of the previous night] since its Zman has passed. This is not like the case of a person who forgot to Daven Ma'ariv who must Daven Shacharis twice, since [in this case] he was not obligated to Daven at night.

The *Drisha* comments:

*This would seem to imply that a person who is involved in communal affairs and the like during Zman Tefila, who is exempt from Davening - as the *Shulchan Aruch* rules in *Orach Chaim* (93) - if during his involvement the Zman Tefila passed - he also does not need to perform Tashlumin by Davening two Tefilos at the next Zman Tefila. This is because he was exempt from Tefila at the time of his involvement, just like in the case of *Avelus*. For what difference does it make if a person is exempt due to an unavoidable *Avelus* or his involvement in a *Mitzva*? In my opinion, it is a*

Kal vaChomer – for while he is involved in communal affairs he is simultaneously performing Hashem's service. How great is the reward for those who perform Hashem's will!

In other words, the *Drisha* extends the law of an *Onen*, who is not required to *Daven Tashlumin*, to a person involved in performing a *Mitzva*. He should certainly be exempt since he is occupied in *Avodas Hashem*.

However, the *Taz* objects to the *Drisha's* conclusion (*ibid.* 5): "I am bewildered as to whether he said such a thing". The *Taz* contends that the fact that a person who did not *Daven* due to *Ones* is nevertheless obligated in *Tashlumin*, demonstrates that not every exemption from *Tefila* generates an exemption from *Tashlumin*. He explains that the case of *Avelus* is different since an *Onen* is in a situation of *P'tur* rather than simply *Ones*. Technically, an *Onen* is able to *Daven*, but the *Avelus* exempts him from doing so. By contrast, an exemption that stems from involvement in a *Mitzva* "is not called a *P'tur* in and of itself; rather, it is *Ones – for he truly cannot Daven*". This is why he must *Daven Tashlumin*; unlike an *Onen* who has an inherent *P'tur*.

Gedolei haPoskim rule like the *Drisha*. They refute the *Taz's* contention and hold that the determining factor is not a person's "ability" to *Daven*, but his obligation, as the *Shach* explains (*Nekudos haKesef ibid.*):

A person who is obligated to Daven but cannot due to an Ones must make up this obligation by Davening Tashlumin. This applies to a person who is ill or inebriated or someone who forgot to Daven. A person who is exempt from Tefila is not required Min haDin to Daven Tashlumin. In this case, it is irrelevant if he was physically able to Daven (Onen) or not (Osek b'Mitzva).

On this basis, the *Shach* (*ibid.*) and *Magen Avraham* (93) rule like the *Drisha*, as do the later *Poskim* including the *Mishna Berura*.

The *Achronim* explain that the *Machlokes* between the *Drisha* and *Taz* depends on whether a person who is *Osek b'Mitzva* is essentially obligated in the second *Mitzva* but exempt due to *Ones*, or if he is entirely exempt from the second *Mitzva* (see *Kehilos Ya'akov Brachos* 15). Evidently, the *Drisha*, *Shach*, *Magen Avraham*, and *Mishna Berura* hold that the exemption is an outright *P'tur* rather than just an *Ones*.

HaGaon Rav Asher Weiss Shlit"a argues that this explanation of the *Machlokes* does not sit well since there is another *Machlokes haPoskim* that should depend on this question, but clearly does not: If a person who is involved in one *Mitzva* nevertheless performs the second one, has he fulfilled the second *Mitzva*? (The practical ramifications are whether he may make a *Bracha* on the second *Mitzva* or whether he must repeat it upon finishing the first *Mitzva*.) The *Mishna Berura* (*Sha'ar haTziyun* 475:39) rules that he fulfills his obligation (though he is unsure whether he may make a *Bracha*).

Presumably, this is because *haOsek b'Mitzva* is still obligated in the second Mitzva but is considered unable to perform it due to *Ones*. Thus, if he performs the second Mitzva he fulfills his obligation. However, if the exemption was an outright *P'tur* how can he fulfill a Mitzva for which he has no obligation?

Given that the *Mishna Berura* rules like the *Drisha*, we would have expected him to rule that a person does not fulfill any obligation if he performs the second Mitzva (if the basis of the *Drisha's* opinion is that he is *Patur* from *Tefila* when he is *Osek b'Mitzva*). We can only conclude that the *Machlokes* between the *Drisha* and the other *Poskim* is not whether *haOsek b'Mitzva* is an *Ones* or a *P'tur*.

We must note that a doctor is considered *Osek b'Mitzva* even if his primary intent is to fulfill his professional obligations (including earning his salary) rather than to fulfill the Mitzva. This is because he is involved in an actual Mitzva, not just a *Hechsher Mitzva*, as explained by the *Biur Halacha* (38).

At any rate, Halacha dictates that in your situation you would be exempt from *Tefila min haDin* and would not be required to *Daven Tashlumin*. However, the *Mishna Berura* (108:2) rules that even in this situation it is correct for a person to *Daven* a *Tefilas Nedava* and add something to the Tefila.

Furthermore, according to the *Mishna Berura* (71:4), if a person only became involved in the Mitzva after the start of *Zman Tefila* and was able to *Daven* beforehand but did not, he must *Daven Tashlumin* since he became obligated in the Tefila. This is a common scenario for doctors working in hospitals where shifts begin, for example, at 7:00, 15:00, and 23:00.