


HALOCHOSCOPE



This week's question:

May one work as support staff in a plastic and cosmetic surgery clinic that does tattooing?

The issues:

- A) *Kesoves ka'ka*, tattoos
- B) *Halachic* issues with plastic and cosmetic surgery
- C) *Lifnei ivair* and *mesayaia*, aiding and abetting a sinner

A) *Kesovess ka'ka*

The Torah forbids making a gash in the skin in grief, and making a tattoo. The implication is that the two are connected. However, they are considered separate prohibitions, and tattooing is forbidden even when it is not done in grief. Furthermore, while the gash is clearly made in the skin, there is no mention of the skin when describing the tattoo. This would seem to indicate that it applies even if the skin was not affected. Thus, writing on the skin might also be forbidden. However, the term *kesovess ka'ka* means more than simply writing, which would be indicated with the simple term *kesovess*. Therefore, it is defined as a tattoo. This involves both the gash and the writing. Thus, the first half of the verse relates to making a gash alone, in grief. The second half refers to making a gash and writing, even when one is not grieving. However, some maintain that the simple reading is also correct. It refers to making a similar type of impression in the skin in grief. Some compare this to a burned impression, or branding. Both of these were customarily done by idolaters in ancient times, at times of grief. The context of these *mitzvos* is *kedusha*, sanctity. The Jewish people must observe *mitzvos* that distinguish them from the neighboring idolaters.

A number of issues are debated by the poskim. The term *kesovess* refers specifically to writing words. [In other instances, such as the *melacha* of writing on *Shabbos*, one must write two words. According to some, two impressions also count. However, the poskim cite opinions here that one word also counts as *kesoves*.] Thus, pictures might not be forbidden Scripturally. There is no indication that the words need to be written in Hebrew. Symbols might also be considered the same as words. However, these would need to be recognized as such, and would represent something to the 'reader'. This raises an interesting question about pictures that have become rather symbolic. Would they be considered 'writing'? The Talmud debates the issue of words. Based on the juxtaposition in the Torah, one opinion maintains that there is no Scriptural liability [for the punishment of lashes] unless the violator wrote the words '*Ani Hashem*'. Another view maintains that he must write the name of a pagan idol. [Nowadays, this is common among some practitioners of certain religions. They make tattoos on the theme of their love of their 'gods'.] Even those who limit the liability for punishment agree that all writing is forbidden. We

follow the majority, that Scripturally forbids all writing, and possibly also any impression. It seems that impressions are at least forbidden as a Rabbinic violation.

The Talmud debates whether one may place ashes on his wound. Since the ashes will remain under the scar, there will be the appearance of *kesovess ka'ka*. [He never made the gash with intent for a tattoo. It was an unintended wound.] Many things that are really permissible were forbidden due to appearances. We follow the view that permits this, because the wound will be obvious enough to show the onlooker that this is not a tattoo. Unless a wound happens to be in the shape of a letter or a word, this seems to indicate that *kesovess ka'ka* need not resemble specific words. It seems that there would be a problem with any wound. The onlooker does not know whether this is a meaningful symbol. However, this might not mean that there would be a Scriptural violation.

In reality, the word *kesoves* has the same root as the word for writing, but is not used anywhere else in this way. Since it is the only such usage in the *Tanach*, some maintain that it does not mean pure writing. Therefore, there is no requirement that the impression is in legible writing. Rather it refers to any image that is 'written'. The word *ka'ka* is also unique. Some connect it to the word for impale, which is used elsewhere. They therefore say that the verse refers to writing or drawing with a sharp implement, deep in the skin. This refers to what is known as a tattoo.

The Talmud says that the Scriptural violation only applies if there was both an incision and a coloring agent placed inside it. Furthermore, the impression must be somewhat permanent. Writing in general means leaving a permanent impression. This is further indicated by the idea of an incision. The poskim debate whether the order is important. Some say that the incision must come first. Then it is filled with ink or dye. Others maintain that if one wrote the impression with the ink or dye, then dug it into the skin, he also violated the Scriptural *mitzvah*.

There is some discussion on whether one who did only one of these violated a Rabbinical expansion of the Scriptural *mitzvah*. Thus, it might be forbidden to write on one's skin, at least in a permanent manner. It would also be forbidden to cut an impression into the skin. We mentioned an opinion that considers branding with a hot implement *kesoves ka'ka*. This would burn the skin, leaving a dark impression. While no ink was used, the burned result could be considered the same as ash.

The prohibition applies to the person making the tattoo in his own skin. It also applies to one who makes the tattoo in someone else's skin. The person receiving the tattoo is held Scripturally liable if he aided the tattoo artist in making it. Otherwise, while it is forbidden, he is not lashed, since he did no action. This *mitzvah* does not apply to gentiles, unless it involves idolatry. However, a Jew may not ask a gentile to do it for him. This involves *amira leakum*, asking a gentile to act as a Jew's agent in violating something forbidden to the Jew.

The poskim say that if one brands a slave, he is not liable. One reason suggested is that he did the act for a different reason. On *Shabbos*, this is called *melacha sheaina tzricha legufa*. While it is forbidden rabbinically [according to the Talmudic view that *Ashkenazic* custom follows] it is not considered Scripturally liable. Therefore, some maintain that under pressing circumstances, one would be permitted to ask a gentile to do

this. The definition of pressing circumstances is debated. Some discuss tattooing a person to identify his questionable lineage. The poskim forbid this, even through a gentile.

Our case involves an unusual type of tattooing. Usually, one adds a tattoo to his physical appearance, for whatever reason. If someone had an injury or other deformity, he might want to tattoo an impression to make him look normal. For example, someone might have had surgery that removed his navel or a fingernail, and then have a tattoo to give the appearance of one. He might have a skin colored tattoo to mask an unsightly discoloration. Would either of these be forbidden? Is it possible that the prohibition applies to altering one's appearance no matter what? Or does it mean that one should not alter it unnaturally, but looking natural is permitted? [See Kedoshim 19:28, commentaries, Sifra. Shabbos 104b Gitin 20b Makos 21a, Poskim. Sefer Hamitzvos LS 41. Chinuch 253. Yavin Shemua 57. Tur Sh Ar YD 180:1-4, commentaries, refs in Darkei Treshuva.]

B) Plastic surgery

Apart from the tattooing issue, there is an issue of *chovel*, injuring. This is Scripturally forbidden. The Talmud discusses one who injures himself. The poskim discuss one who allows another person to injure him. Obviously, when surgery is required for healing, it is permitted. However, the issue arises when the surgery is for cosmetic purposes. May one perform this, and may the patient ask for it? If the issue at hand is considered permissible injury due to *refuah*, the same permissibility could be applied to the other prohibitions involved, such as tattooing.

The first question is whether surgery is always permitted for healing. This is discussed by the poskim in depth. The Torah specifically requires saving a life. It also provides for healing the sick, and indicates that this is a *mitzvah*, even when life is not in danger at all. Minor ailments also qualify, if not as a *mitzvah* to heal, at least as a *mitzvah* to help one's fellow. However, this does not necessarily involve surgery. Some raise questions about altering the form of the human body created by Hashem. If the surgery is done to heal, it is permitted. If it is elective, there is some debate. An example is surgery to facilitate childbirth. Some maintain that one may not elect to undergo this type of surgery. Usually, it can involve some danger as well. Nonetheless, many poskim permit such surgery in most situations. Usually, it involves correcting a deformity or other injury, that could be lived with, but could also be corrected. Even plastic surgery often makes life easier, such as to alter the shape of the mouth to make it easier to eat or to talk.

Cosmetic surgery is more complex. Usually, there is no actual injury. The surgery will not make the person healthier either. There is no pain. Some poskim forbid any such surgery. Others permit it. This is based on a number of factors. Self-injury is debated by the Talmud, and some rule to permit it. In addition, there is ample indication that some poskim permit making incisions if they are not done in competition or spite. The Talmud also discusses removing warts, though they pose no harm. In some cases, this is required for constructive reasons, such as to fulfill a *mitzvah*. Yet, there seems to be no issue with it being forbidden for any reason.

The Torah recognizes piercing ears and noses for beautifying reasons. One could suggest that this does not rise to the level of surgery. It could still be considered *chovel*. However, it would be minor enough, and pose no risk, to be permitted with consent. In

our case, the tattooing is done for similar cosmetic reasons. While it seems to involve *chovel* on oneself, the absence of any commentators' raising this issue indicates that there must be some reason to consider it on a lower level. [See Baba Kama 91b, Poskim. Le'or Hahalacha, Mishpat Shylock. Tzitz Eliezer XI:41. Igros Moshe CMII:66.]

C) *Lifnei ivair, mesayaia*

Our questioner will not be participating in the activity of the tattooing artists. He is doing things like arranging the appointments. The Torah forbids helping another person sin. This is derived from the *mitzvah* not to place a stumbling block before the blind. The typical case is when the sinner could not complete his activity without the help of the helper. For example, if a *nazir*, who may not drink wine, is across a river and cannot reach the wine, the helper on this side may not pass it to him. If the sinner is able to perform his action without help, but the helper makes it easier for him, he violates a Rabbinic extension, called *mesayaia*. If he is present when the sinner does it, and does nothing to help him, but also does nothing to stop him, he violates a Scriptural *mitzvah* to admonish. If the violator would never listen to him anyhow, he might still be required to say something. If the violator would become more entrenched after hearing the admonishment, the person may not admonish. Furthermore, if the violator is currently ignorant about the sin, but when he is told will still ignore it, he will now become an intentional sinner. Before being admonished, he was only an unintentional sinner. Therefore, if the sin is not expressed explicitly in the Torah, it is better to let him sin unintentionally. The same applies if the sin is Rabbinically forbidden. If, however, it is expressed explicitly, the admonisher has a responsibility to say something.

For the purposes of the question, let us assume that the artists and/or patients are Jewish. In summary, some poskim permit cosmetic surgery. This might be extended in our case to cosmetic tattooing, if it is considered somewhat 'healing'. These tattoos do not alter the appearance unnaturally, but are done to restore natural appearance. There is no writing in any language. Accordingly, since it is probably Rabbinically forbidden if at all, and might be considered a permissible form of healing, the person may act as a support staff member. [See Halochoscope XIV:1 2, etc. refs.]

In conclusion, one may act as a support staff member in this clinic.

On the Parsha ... *The [Egyptian] astrologers were unable to stand before Moshe .. due to the shechin boils .. [9:11] Because they were embarrassed. [Ramban]* While this is called a plague, implying pain, it seems that the main object was to shame and embarrass the Egyptians. Apparently, certain types of embarrassing external appearances are considered painful. Perhaps, improving their appearance could be considered healing this type of pain.

Sponsored by Dr. Leon and Mrs. Miriam Kohane in memory of his father Michael ben

R. Dovid Hakohain z"l, whose *yahrzeit* is on the 13th of Teves. ☞

Sponsored by Noah Bass and Debbie Rotenstein in memory of his mother, Golda bas

Shmuel, a"h, whose *yahrzeit* is on the 25th of Teves. ☞

© Rabbi Shimon Silver, January 2012.

Subscriptions and Sponsorships available. (412) 421-0508. halochoscope@hotmail.com