

RESPONSE TO MISCARRIAGE

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The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.

שאלה

What should the Jewish response be to miscarriage?

תשובה

The question of what constitutes an appropriate response to miscarriage has been placed on the agenda of the Committee on Jewish Law and Standards. The assumption underlying this question is that the tendency to ignore in ritual the emotional impact and physical trauma of miscarriage is probably erroneous. The Jewish mindset, dominated by halakhah and its formulated responses to virtually every activity and event in one's life, is stymied when confronted by a miscarriage, a traumatic event for which there is no formulated response. So we must ask: What should the Jewish response be to miscarriage?

A paper on this question that was submitted to the CJLS and subsequently withdrawn built on the idea of miscarriage as constituting a death¹ (which, indeed, it does – the death of a fetus, the death of the hopes and dreams of the parents), and applied to miscarriage the classical categories of **אנינות** and **אבלות**. That paper allowed for varying responses to miscarriage, and proposed that the individual rabbi, after speaking with the parents, would decide upon the level of **אנינות** and **אבלות** appropriate for the specific case.

That opinion, it seems to me, has two significant weaknesses. First, it is problematic that individual rabbis would determine varying level of **אנינות** and **אבלות**: parents may not express their full degree of mourning until long after the event; there is the risk of seem-

¹ That paper also addressed the issues of response to neonatal and perinatal death. I do not discuss those matters herein.

ing to offer preferential treatment when one couple but not another is urged to observe full *אנינות* and *אבלות*; and a community may be reluctant to fulfill its responsibilities (e.g., daily *minyān*, *shivah* visits, etc.) during a period of *אבלות* in the case of miscarriage.

The other weakness, in my opinion, is the application of *אנינות* and *אבלות* to the death of a fetus. Our tradition has always been careful to make a distinction between a fetus and a person, holding that “personhood” comes only with birth. While the advances of fetal medicine have served to highlight the ambiguities, a fetus, no matter how viable, is not yet a person. Therefore, to apply *אנינות* and *אבלות* – ritualized behaviors in response to a dead person – to miscarriage is to obliterate the distinction between fetus and person to the point where the question of abortion, on which Judaism has held a relatively tolerant view, would have to be reexamined with all of the problematic ramifications.

Thus, it is my opinion that *אנינות* and *אבלות*, even in varying degrees, are inappropriate responses to the event of miscarriage from halakhic, emotional and logical points of view. This is not, however, to downplay the emotional impact which a miscarriage may have on the parents. The emotional effects of a miscarriage can be devastating and long-lasting. Even in a case where it is statistically probable that soon the woman will conceive again (i.e., in a situation of relative youth, good health, and an absence of fertility problems), she, as well as her husband, may grieve deeply for *this* pregnancy, for *this* child. But in addition to feelings of loss, frustration, anger, and even sexual inadequacy, issues of aging, infertility, sexual dysfunction or family discord are apt to complicate and prolong the grief.

The present lack of a ritual response to miscarriage is a glaring gap, especially for people whose lives are in every other way governed by Jewish law. There must be a formulated response to miscarriage which addresses the emotional impact and the physical trauma; a response which enables the parents to channel and express their emotions, and which enables the community to acknowledge their loss. So if *אנינות* and *אבלות* are not the appropriate responses, what is?² In this paper, I will propose guidelines for response to miscarriage, both on the couple’s part and on the community’s. Throughout I shall be dealing with patterns which have always, in fact, been permissible. In that sense, my paper is not a halakhic innovation. However, it is necessary to say these things in writing, because there has been a widespread misperception that Jewish law proscribed these behaviors in the case of miscarriage.

We begin by defining the term “miscarriage” for our purposes. While the medical world defines miscarriage as occurring up to the fetal age of twenty weeks,³ even fetal loss after this point may be described as a “miscarriage” by the couple.⁴ While for the purpose of this paper I have had in mind fetal loss up to twenty weeks, the suggestions made herein could be followed as well by a couple whose loss occurred at a later stage – assuming that they felt more comfortable with these guidelines rather than others which might be presented to them. Thus, “miscarriage” should be understood as having happened where the couple themselves use this term.⁵

² An effort to begin addressing this question can be found in Robert H. Loewy, “A Rabbi Confronts Miscarriage, Stillbirth, and Infant Death,” in *Journal of Reform Judaism* 35 (spring 1988): 1-6.

³ See, for example, *Stedman’s Medical Dictionary*, 23rd ed., s.v. “miscarriage.”

⁴ See, for example, the imprecise use of the term “miscarriage” in the *New York Times*, 14 Mar. 1991, p. A22.

⁵ While elected, therapeutic abortion is not a miscarriage, neither in medical parlance nor in lay, the grief attending such a tragedy is certainly not unlike that of a miscarriage. I would argue that the suggested responses to miscarriage presented in this paper could also be applied to such a case of elected abortion, should the couple agree to its appropriateness.

The proposal of this paper is that the category of *חולה* and the mitzvah of *ביקור חולים* can provide us with a framework in which to respond to miscarriage.

The first question we must ask is whether or not the category of *חולה* is applicable. In other words, is a woman who has just miscarried technically a *חולה*? Moreover, can her husband be technically considered a *חולה*? And are they therefore entitled to, and in need of, the benefits due a *חולה*?

A *חולה* is “a person who is stricken with an illness which depletes the strength of his or her entire body. . . such that he or she is not able to walk in the market and has taken to bed.”⁶ A woman who has just miscarried may feel very weak throughout her entire body, be unable to walk more than a step or two (if that), and be in need of bedrest. The physical trauma of miscarriage should not be underestimated, for a problematic miscarriage may not only be protracted and physically taxing, but complications may threaten the woman’s life. Thus, for the woman there is no question that she qualifies as a *חולה*, on the physical evidence alone.

But what about the father who endures no physical trauma? The assumption of the question at hand is that miscarriage can be emotionally traumatic not only for the mother but for the father as well. So we must ask: Does mental distress qualify one as a *חולה*? With reference to the aforementioned definition, we observe that mental distress *can* make one feel enervated, and one might take to his or her bed – but one also *might* not. In fact, the husband of one who has just miscarried, despite his mental distress, is very likely to be physically active, attending to the needs of his wife and his household. So can he be considered a *חולה*?

While, to my knowledge, this specific question does not appear in the responsa literature, comments by poskim in matters of mental health suggest that we can consider the father a *חולה*. For example, “Mental health is equal to physical health as a halakhic concern.”⁷ A sentiment expressed again and again in the literature is that “*ביקור חולים* is for the body and the soul.”⁸ Admittedly, “the soul” is interpreted as referring to that of the one who is physically sick, i.e., his or her emotional, psychological and spiritual needs should be addressed as well as the physical. But since the literature recognizes the interdependence of physical and mental health,⁹ it seems reasonable to assert that mental distress, by virtue of the potential effect it may have on the physical well-being, can also require *ביקור חולים*. Therefore, I suggest that we can assume that the father too, because of his mental distress, can be considered a *חולה*.

Since one of the main purposes of *ביקור חולים* is to attend to the person’s needs,¹⁰ we can test our argument that the woman who has just miscarried and her husband are *חולים* by asking whether or not they are in need of such attention.

⁶ *Encyclopedia Talmudit*, vol. 13, col. 233. See this description used also in S.A. Hoshen Mishpat 250:5. I alone am responsible for the translation of this phrase, as well as for all other translations occurring in this paper.

I call to attention to the fact that a *יולדת* is considered a *חולה* (col. 325, which cites Rashi, Shabbat 129a, (כל צורכי). Since the physical trauma of miscarriage can be like that of labor, an analogy can be made from the *יולדת* to the one who has miscarried. However, even without this helpful analogy, the main body of this paper proves that the basic definition for *חולה* can be applied to one who has miscarried.

⁷ David M. Feldman, *Health and Medicine in the Jewish Tradition* (New York: Crossroad, 1986), p. 49.

⁸ See, for example, Jehiel Tucatzinsky, *Gesher HaHayyim* (Jerusalem, 1960), p. 27.

⁹ See, for example, Feldman, *Health and Medicine*, p. 31.

¹⁰ *Gesher HaHayyim*, p. 27; Rambam, *Torat Ha-Adam*, in *Kitvei Rambam*, ed. Charles B. Chavel (Jerusalem, 1963), vol. 2, p. 17. See also Rashi, Nedarim 40a, “...מפני שבני אדם...”; the other primary purpose is to say a prayer on behalf of the *חולה*.

In the case of miscarriage an adult member of the household is indisposed for at least a few days. This inconvenience is compounded by trips to the doctor or by hospitalization. Added to the disruptions of traumatic physical illness is the mental distress, which magnifies the inconvenience. Because of her physical condition alone, the woman is unable to attend to errands, household responsibilities and childcare. Because of her husband's attention to the care of his wife, along with his distress, he may well have difficulty attending to them adequately. There is no question that in such a situation there is need for the physical benefits of **ביקור חולים**, and certainly the couple is entitled to them.

Now that I have argued that the category of **חולה** and the mitzvah of **ביקור חולים** apply to a miscarriage, what are the specifics of their application?

In order for a community to fulfill its responsibilities for **ביקור חולים**, the **חולה** has to notify his or her rabbi and/or friend(s) so that word of this loss can be spread. Thus, the workings of **ביקור חולים** are dependent upon the **חולה**'s willingness to make his or her illness public knowledge. This is a handicap of this proposed response to miscarriage, an event which some people feel reluctant to make public knowledge. If the woman and/or her husband seem reluctant to tell people, a friend or rabbi can gently encourage the couple to share with their community the news of their loss and can help the couple identify those friends and family members who can be told. The rabbi, while explaining the **מי שברך**, **מי שברך**, **מקרה** and **הגומל** visit (all discussed further on), can assure the couple of possibilities for discretion, should that be their concern.

Immediately after the event, the husband may wish to make or arrange for a **מי שברך** at synagogue for his wife,¹¹ with as much consideration for the request for **הנפש** as for **הגוף**. In light of his status as **חולה**, he may ask that one be made for him as well. After the woman has recovered physically, she can recite **הגומל**.¹² In doing so, she marks her own return to physical strength and independence.¹³

Both of these prayers are ways in which the couple can publicly, yet discreetly, remark on their recent experience. Concerned community members will note these prayers and perhaps inquire as to their reason: On both occasions the answer can be as vague or as specific as the person wishes. But the mere statement of the prayers, as responses to and markers of a physically and emotionally traumatic event, will have been therapeutic for the couple.

Finally, it should be noted that a **מקרה** visit is required in the aftermath of a miscarriage. In those cases where the couple is not accustomed to observing **הילכות טהרה**, **משפחה**, the rabbi might suggest to the woman a **מקרה** visit at an appropriate time.¹⁴ The

¹¹ On the therapeutic importance of this prayer see Feldman, *Health and Medicine*, pp. 30-31.

¹² Regarding the appropriateness of a woman who has recently miscarried reciting **הגומל**, I have relied upon Karo's opinion that anyone "who was sick and who has recovered" should recite it (Shulhan Arukh, Orah Hayyim 219:1), "even if [the illness] was not life-threatening" (219:8). I have chosen to disregard Isserles' note that the Ashkenazic practice is to limit **הגומל** to life-threatening illnesses (ad loc.). The comments of Magen David and Sha'arei T'shuvah (ad loc.) suggest to me that the concern is that one should not be reciting **הגומל** for insignificant, transitory illnesses (e.g., a headache). While one may hesitate to describe miscarriage as life-threatening (i.e., to the woman; although see my qualification above), one could hardly describe it as insignificant and transitory. Therefore, I do not think it an abuse of **הגומל** for a woman who has recently miscarried to recite it.

¹³ Here again, a comparison can be drawn to a **יולדת**. Even where a birth has not been marked by the woman's physical trauma or an actual threat to her health, she recites **הגומל**. Even in the tragic case of neonatal death, she recites **הגומל** as a **יולדת**. So too in the case of miscarriage, where the woman may be occupied by her feelings of grief, she is encouraged to pause a moment and give thanks for her return to health and, one hopes, to renewed possibilities for conception.

¹⁴ See S.A. Yoreh De'ah 194:2 and the commentaries thereon for the guidelines in determining the appropriate time for the visit.

rabbi can take special care in describing the symbolic merits of such a visit, with emphasis upon its serving as a marker for a new beginning.

The prayers and *מקוה* visit help to serve as ritual responses to the emotional and physical trauma of miscarriage, and will also help the couple to begin channeling and expressing their emotions. But they are not entirely sufficient: In the first place, they do not provide for the comfort and support which the couple need during those few days following the miscarriage. In the second place, they do not address the feelings of grief which the couple might be experiencing.

It is with regard to the first point that the community's responsibility enters into the picture via *ביקור חולים*. As mentioned above, when the rabbi or friend is first told the news, his or her response should be: "Whom shall I call? Whom would you like to be told?" And, if the person is unable, due to distraction, to provide names, the rabbi or friend can make suggestions of whom he or she might telephone. With the couple's consent, the rabbi can also make a discreet announcement in synagogue (depending upon the synagogue's ambiance and customs; for example, "Plonit has been suddenly ill this week and came home from the hospital yesterday. Friends are welcome to stop by."). Once people have been informed, the laws of *ביקור חולים* should be followed and are most appropriate under the circumstances:¹⁵ close friends and relatives should come immediately; more casual friends, for example a couple in the community who has recently had a miscarriage and who is willing to provide an empathic ear and make suggestions for helpful reading or activities, can visit a few days later. (The rabbi might be particularly helpful in making this connection.)

People should take care that their visit does not become a burden: Do not come at an inappropriately early or late hour, do not stay overlong, do not come with advice on medicines and doctors, and do not regale the couple with one's own history of miscarriage.¹⁶

Aside from ascertaining and attending to needs which the couple may have (shopping, cooking, cleaning), the visitor is also responsible to offer a prayer for their recovery, physical and emotional, from this loss.¹⁷ The formulated prayer given in the *Shulhan Arukh*¹⁸ is appropriate: *המקום ירחם [עליכם] בתוך חולי ישראל*.

Finally, *ביקור חולים* offers us a model for behavior if the couple feels uncomfortable with visitors: One can still check whether a particular need – an errand, shopping, child-care, etc. – could be met.¹⁹

But what about the second point raised above, that of addressing the grief which the couple may be experiencing? The recitations of the *מי שברך* and *הגומל*, along with the visit to the *מקוה*, may still not fully address the poignant loss which the miscarriage represents for the couple.

¹⁵ Here I have been guided by S.A. Yoreh De'ah 335; *Gesher HaHayyim*, p. 27f.; Rambam, *Hilkhos Avel*, 14.

¹⁶ On these latter two points especially see *Gesher HaHayyim*, p. 27.

¹⁷ See above, n. 10.

¹⁸ Yoreh De'ah 335:6. See also 335:4-5 for the requirement of this statement and the permissibility of its recitation in any language.

¹⁹ Yoreh De'ah 335:8. It should be noted that this passage describes someone inquiring whether specific errands need to be done – e.g., "Does the laundry need to be done? Does the house need to be cleaned?" Too often people couch their offers to help in general, non-committal language ("Is there anything I can do?"). Consequently these offers are viewed as courteous formalities and declined. Karo's language is instructive for it prods us to make our offers very pointed ("I'm on my way to the grocery. What do you need?" "I can take your kid off your hands for you tomorrow – what time would be good?" "I'd like to make you dinner for Friday night: Is broiled chicken okay?").

As a direct response to these feelings, the rabbi should explain that the *מי שברך* is not only an acknowledgement of the woman's physical trauma, but also her mental distress; likewise *הגומל*, which can be delayed until the woman is feeling "back on her feet" emotionally as well as physically. The *מקוה* visit can serve as a powerful symbol that, in spite of fetal loss, the life-cycle does continue.

Additionally, the rabbi and/or a *חברים ביקור חולים* can provide the couple with *תהילים* and/or prayers composed specifically for the occasion of miscarriage, along with suggestions for when and how these might be read (e.g., silently before the *מי שברך* and *הגומל*; together every evening and morning for the following week; at the *מקוה*).

The couple's grief can be further addressed by their feeling that their loss has been acknowledged by their community and by their having the opportunity to verbalize their grief. *ביקור חולים* will bring caring people to the couple's side and afford them the possibility of speaking about their grief. As with a shivah visit, a *ביקור חולים* visit can serve as an acknowledgement of the couple's grief, even a sharing in it.

A visit of *ביקור חולים* can be just as much an expression of grief as it is a wish for health: When visiting a dying friend, one's visit is much more a grieving for the loss soon to come than it is a futile wish for health. So too with miscarriage: While the ostensible reason one visits is to make an offer of assistance and wish the couple their health, the visit also serves as an acknowledgment of their loss and as an opportunity to share in their grief.

It can be argued that these responses, in part or in total, while not without benefit, still do not adequately address the feeling of grief and loss which a miscarriage may cause. But no ritual, no behavior, no prayer, can remove feelings of loss. An analogy can be made to the death of a parent and the attendant rituals and behaviors. Shivah, shloshim, kaddish, yizkor and yahrzeit do not, in and of themselves, ease the complex of emotions which one feels. But they provide ritual frameworks for one to verbalize and act out his or her loss, and also provide a framework in which others can acknowledge this loss. So too with the rituals and frameworks suggested here as responses to miscarriage.

Before its applicability to miscarriage can be made, everyone's individual responsibility for *ביקור חולים* must be underscored: *ביקור חולים מצוה על הכל*.²⁰ Too often this responsibility is overlooked in our communities, due in part to women in the work-force, but also due to over-reliance upon the telephone, the pastoral role of our rabbis and designated committees to perform certain deeds. While a phone call, or a card, or a sympathetic remark made later are not without merit, none is equal to the physical presence of someone who is willing to listen, offer words of support and attend to specific needs during those days of illness and crisis.

We are all guilty of having forgotten our responsibilities for *ביקור חולים*. They are not responsibilities which can be left solely to the rabbi of a community, in part because no rabbi can bear that burden, but also because during illness one needs one's friends around as well as one's rabbi. Nor should *ביקור חולים* be left entirely to a *חברה*, which may offer some excellent support but cannot offer the sympathetic ear which only a friend can.²¹

²⁰ Rambam, *Hilkhot Avel* 14:4.

²¹ See J. David Bleich, *Judaism and Healing: Halakhic Perspectives* (New York: Ktav, 1981), pp. 43-44, who emphasizes that a *חברים ביקור חולים* does not "exempt others" from their responsibilities.

Aside from direct care, such as babysitting, food preparation, etc., a *חברה* could prepare a pamphlet which explains the protocol of *ביקור חולים* and how it can be applied to miscarriage. Such a pamphlet could also contain prayers composed specifically for the event of miscarriage.

A telephone call is not a substitute for ביקור חולים.²² One can phone ahead to see when the best time to visit might be, but the call does not constitute a visit. One may call to see what food items are needed in the house or if an errand needs running, but a call does not substitute for the presence of a caring, sympathetic ear.²³

Nor should ביקור חולים be left for only those instances of extremely serious and terminal illness: One should not have to contract cancer or heart disease to merit the visits of friends and the offers of assistance. Even allowing for concerns that ביקור חולים not be abused (e.g., one should not expect nor demand it when afflicted by hay fever), there are nevertheless many illnesses which, while perhaps not life-threatening, are traumatic, painful and enervating – for the חולה as well as for her/his family; and these illnesses, miscarriage among them, merit ביקור חולים.

The eclipse of the importance of ביקור חולים has contributed to a loss of the sense of community within our communities as well as to the loss of interest in synagogue (i.e., community) involvement. ביקור חולים is like an insurance policy: The more one contributes to it, the more one will get out of it. So even if the considerations of mitzvah and social responsibility do not compel one, self-interest should! Because they know they may need it tomorrow, people have learned to take shivah minyans seriously. The same could be said of ביקור חולים. But, education is an important factor: People have been educated to the need for and the workings of shivah minyans. So too they must be educated to the need for and the workings of ביקור חולים.

Conclusion

The category of חולה and the mitzvah of ביקור חולים, along with מקוה, provide us with guidelines for an appropriate and sufficient response to miscarriage, both on the couple's part and on the community's, without any stretching of the halakhic limits. These frameworks provide us with rituals which help to acknowledge the emotional impact and physical trauma of miscarriage. They also provide ways for the couple to channel emotions and for the community to acknowledge the loss. If the suggestions made herein were followed, then no one experiencing a miscarriage would need to feel overwhelmed by day-to-day responsibilities in a time of great stress, or want for sympathetic ears, or sense their loss unacknowledged by either their community or their religion.

²² On this question, see Moshe Feinstein, *Iggrot Moshe*, Yoreh De'ah vol. 1, n. 223, p. 450. Feinstein also emphasizes the importance of attending to the needs of the חולה.

²³ For a summary of the importance of the visit, see Feldman, *Health and Medicine*, pp. 32-33.