

# **קונטרס תורת החרש**

## **THE TORAS HACHERESH GUIDEBOOK**

***Part I & Part II – חלק א' וב'***

### **Part I – חלק א'**

***A Practical Guide to the  
Use of Electronic Hearing Devices  
On Shabbos and Yom Tov***

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### **Part II – חלק ב'**

***Fulfillment of Torah Obligations by the  
Contemporary Jewish Deaf and Hard of Hearing***

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## מודעה

זאת למודעי שנעזרתי הרבה בבקיאות העשירה שבשו"ת יחווה דעת ושבשו"ת ציץ אליעזר, וכן בהרבה מראה מקומות שמצאתי בס' החשמל בהלכה (הוצאת מכון מדעי טכנולוגי לבעיות בהלכה, תשל"ח), וגם בקונטרס החשוב בשם "יעיר לי אוזן" בענין לקויי שמיעה בתקיעת שופר (הוצאת מכון למחקר תורני שע"י שמע קולנו, תש"ע) ועל מצוות שבשמיעה למרכיבי מכשירי שמיעה ושתלים (ממכון הנ"ל, תשע"א), ועכ"ז השתדלתי לעיין בפנים בכל מקור ולצטט לשון הפוסקים כלשונם המקורי, ויותר ממה שהבאתי כאן נמצא במקורות אלו ובשאר מקומות, אמנם הבאתי דברי הפוסקים המפורסמים והמקובלים ביותר אצלנו, ושאר מקורות רק כשמצאתי בהם איזה חידוש והוספה, וכבר אמרו אין בית המדרש בלי חידוש ולכן הצעתי פה גם דברים שנתבארו ושנתבררו בדרך עיוני בהלכות אלו בס"ד מרובה כיד השם הטובה עלי הגדיל.

**Comments and Questions are Welcome!**

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## **TORAS HACHERESH – Part I**

### **Use of Electronic Hearing Devices On Shabbos and Yom Tov**

#### **Introduction**

The consensus of most contemporary Halachic authorities is that the use of electronic hearing devices, such as hearing aids and cochlear implants, is permitted on Shabbos and Yom Tov, provided that they are activated before and throughout the day. Yet, the same Poskim rule as well that use of standard microphones (P.A. systems) is prohibited on Shabbos and Yom Tov. The *Halachic* basis for this distinction, and relevant rulings regarding handling and wearing these devices, both indoors and while going outside, as well as speaking to aid or implant users on Shabbos and Yom Tov, will be explained herein, *b'ezras HaShem*.

*[Please note that the Halachos of Shabbos and Yom Tov are extremely complex, in addition to being of the utmost significance and consequence. As a general rule, lenient opinions adopted by Halachic authorities in certain situations cannot readily be adapted to other applications, without full knowledge of all the relevant Halachic sources and the various factors taken into consideration in making the lenient ruling. In this particular subject regarding the use of electronic hearing devices, many Poskim gave substantial consideration to the degree of difficulty that would be experienced by those dependent on these devices had their use been constrained on Shabbos and Yom Tov. As expressed by Rav Shlomo Zalman Auerbach in his correspondence with Rav Henkin (Minchas Shlomo 2:18:2), he considered it a great mitzvah to be lenient in this matter, on account of the suffering of the deaf and hard-of-hearing. These rulings are therefore intended only for the specific situations upon which they were made, and are not to be extended to any other applications wherein the same considerations may not be fully applicable.]*

## **Chapter 1**

### ***Speaking to Hearing Device Users on Shabbos and Yom Tov***

A brief description of the key components of hearing aids and cochlear implants, and the means by which they benefit their wearers' hearing, should promote clarity in the Halachic discussions that relate to these matters.

#### ***Hearing Aids***

Hearing aids are essentially miniaturized microphone-amplifier systems. They receive speech and other audible acoustic sounds through a microphone unit, usually worn at ear level (either behind or in the ear). The aid converts these sounds into inaudible electronic signals, processes them through internal analog or digital circuitry,<sup>1</sup> and then converts them back into acoustic sound waves, in the speaker-unit. Through this process, the sound is amplified to the volume level needed to be more readily heard by the affected ear. The resulting sound is then delivered to that ear by means of a custom made ear-mold that fits snugly and securely inside the ear canal. The level of amplification is controlled either with a turn of the regulator dial, which varies the strength of the electromagnetic speaker unit, or with the press of a button, which controls the circuitry. Battery power is activated and deactivated either with an on-off switch, or by simply opening and closing the battery compartment.

#### ***Speaking to Hearing-Aid Wearers***

Rav Shlomo Zalman Auerbach zt"l<sup>2</sup>, in his *Minchas Shlomo* (1:9)<sup>3</sup>, explores at length both the technological and Halachic aspects of the issues involved in speaking to a

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<sup>1</sup> Digital hearing aids can be programmed with multiple programs that reduce acoustic feedback (whistling) and background noise, automatically accommodate different listening environments, shift high frequencies to lower ranges where hearing may be better, and implement other features not feasible through analog technology. Nonetheless, the systems they employ in reproducing sounds are essentially the same, and the sounds that they both produce are virtually identical to the original sounds, so both analog and digital aids are dealt with equally in the Halachos regarding their use on Shabbos and Yom Tov, as well as for the purposes of fulfillment of *mitzvos* (to be addressed in Part II). See further regarding analog and digital technologies, below (Chapter 2 notes 3-4).

<sup>2</sup> It is interesting to note that it was these very issues, relating to the use of hearing aids on Shabbos, that prompted the young Rav Shlomo Zalman to enter into the study of electricity and the Halachos related to its usage (see *Reb Shlomo Zalman*, by Rabbi Y. M. Stern, chapter 5), and to correspond with the Chazon Ish on these issues (see *Minchas Shlomo* 2:17). Upon mastering both the technology and the Halachos involved, he wrote numerous

hearing-aid wearer, and concludes that it entails no activity prohibited on Shabbos. He explains that such speech does not complete any utensil,<sup>4</sup> nor does it cause any combusive action.<sup>5</sup> This eliminates the concern for the two potential Torah violations involved with the use of electrical appliances on Shabbos. Additionally, he explains that the production of sounds or voice through the aid should not be considered creating something new, which would involve a Rabbinic restriction,<sup>6</sup> since these sounds do not remain existent for any duration of time.<sup>7</sup> He also addresses the various restrictions<sup>8</sup>

responsa and articles on these subjects, and published his *Meorei Eish*, the only Halachic work on the subject of electricity to win the enthusiastic approval of Rav Chaim Ozer Grodzinsky, the world-recognized Torah authority in Vilna. His singular expertise in these areas was recognized by many other Halachic authorities, who conferred with him and quoted his opinion as authoritative in these matters. See *Minchas Yitzchak* (2:17:4; 3:38:16), *Yabia Omer* (1:19:16-19; 7:39:3) *Tzitz Eliezer* (3:16::9; 4:4:2; 8:11:6; 9:21). See also *Minchas Shlomo* (2:18) where Rav Isser Zalman Meltzer delegated Rav Shlomo Zalman to respond to Rav Henkin on questions related to hearing aids on Shabbos. Also, see *Igros Moshe* (Orach Chaim 5:43) who refers the question to Rav Shlomo Zalman in Israel “who is expert in the entire subject of electricity”. We have relied most heavily on his rulings throughout these Halachos.

<sup>3</sup> Initially published by the Institute for Science and Halacha as *Kovetz Ma'amarim B'inyanei Chasmal b'Shabbos* (Jerusalem '78), a collection of previously published papers of Rav Shlomo Zalman on Electricity and Shabbos, which he expanded for this edition. Later republished by inclusion in his *Minchas Shlomo* ('86).

<sup>4</sup> *Chazon Ish* (Orach Chaim 50:9) bases the prohibition regarding usage of electricity on Shabbos on the *melacha* of *boneh* and *soseir*. However, as defined by the *Chazon Ish* himself, this prohibition applies specifically to completing a circuit upon activation, which is comparable to the initial creation of a utensil; it does not apply to usage once activated, which is similar to opening and closing a preexistent item. See loc. cit. (*d''h v'ha*), as well as letter from *Chazon Ish* published in *Minchas Shlomo* (1:11 p. 93). See also *Tikunim U'miluim*, Rav Shlomo Zalman's addendum to *Shmiras Shabbos K'hilchasa* (34: n.108), that the momentary electro-mechanical effects caused by speaking to the aid wearer do not entail *boneh* or *soseir* even according to the *Chazon Ish*.

<sup>5</sup> See *Tzitz Eliezer* (7:11) who quotes the *Tchebiner Rav* and Rav Akiva Sofer (Rebbi Akiva V'Toraso 1:29) who were concerned for *ha'avarah*, but brings that Rav Shlomo Zalman disputed this concern. The *Tzitz Eliezer* seems to adopt this ruling, and in a subsequent responsa (9:21) he brings that Rav Tzvi Pesach Frank also concurred with Rav Shlomo Zalman's opinion. See also *ibid* (4:26:1) and *Yechaveh Da'as* (2:49 *d''h ulom*). *Minchas Shlomo* (1:9 pg. 63 n. 1) notes further that transistorized hearing aids, having no glowing elements (as did older models), avoid any lighting (*ha'avarah*) or extinguishing (*kibui*). See also *Minchas Yitzchak* (3:41) who states that there is no *melacha* of *ha'avarah* or *bishul* because the wires do not become sufficiently hot. *Igros Moshe* (Orach Chaim 4:84-85) is initially concerned for some *melacha* involved in the amplification itself, but concludes, specifically regarding hearing aids, that he finds no basis for such concern.

<sup>6</sup> *Responsa Beis Yitzchak* (in addendum to *Yoreh De'ah* 2:31) cites the restriction of *molid* as the basis for prohibiting the use of electrical devices on Shabbos. However, both his grandson, the *Reisher Rav*, as quoted in *Tzitz Eliezer* (1:20:10 sect.1), and Rav Shlomo Zalman, in *Minchas Shlomo* (1:9 pg. 67 *d''h ulam*), understood that the *Beis Yitzchak* applied this restriction only to the creation of a new flow of current through completion of a circuit (i.e. initial activation), as opposed to the continued usage of a previously activated electrical device. Interestingly, the case in point in the *Beis Yitzchak* is speaking into a telephone on Shabbos, which is inherently similar to our issue of speaking to a hearing aid user.

<sup>7</sup> The classic cases of *molid* are scenting a garment with fragrant incense (*Beitzta* 23a), and kindling a fire on *Yom Tov* (*ibid* 33a). In each of these cases a lasting effect is created, i.e. the fragrance in the garment or the burning flame. Mere sound, by contrast, has no such lasting effect, and is therefore below the standard of creative activities restricted because of *molid*. See *Minchas Shlomo* (*ibid* p. 73 *d''h aval nireh*) and *Tzitz Eliezer* (6:6:15) for additional reasons to exclude such sound production from the restriction of *molid*.

<sup>8</sup> There are three separate restrictions relating to sound production, each being derived from distinct sources:

- (a) *gezeirah shema yitakein klei shir* – *Beitzta* (36b, 30a), *Shulchan Aruch* (Orach Chaim 339:3);
- (b) *oludei kolah* – *Eiruvim* (104a), *Shulchan Aruch* (338); and

regarding production of sounds on Shabbos and Yom Tov,<sup>9</sup> and explains why they do not apply to speaking to hearing aid wearers (in distinction to publicly heard microphone systems).<sup>10</sup> Hearing aids are not associated with musical instruments,<sup>11</sup> and produce relatively quiet speech sounds that are heard in the ear of the aid user alone.<sup>12</sup> For these and other reasons,<sup>13</sup> he and many other Halachic authorities conclude that it is

(c) *av'shah milсах/ zilzul Shabbos* – Shabbos (18a) and Rashi (ad loc), Shulchan Aruch (252:5).

(a) The *gezeirah shema yitakein* applies primarily to musical instruments, *klei shir*, and by extension to clapping, tapping, and dancing, when done in a musical context (see Rashi Beitza 36b, Mogen Avrohom 339:2 and Mishnah Berurah 338:1), being that these actions are often associated with musical accompaniment.

(b) Regarding *oludei kolah* there are two opinions in the Gemara and Poskim: (1) that this is a new Rabbinic prohibition which is based on the creative aspect of sound production, similar to *oludei rei'ach* and *molid eish* (see above, note 7), and applies to all sounds; and (2) that this is merely part of the *gezeirah shema yitakein klei shir*, and is accordingly limited to musical sounds only. [See Ohr Sameach (Hil. Shabbos 23:4,5) who offers this explanation of these two opinions. See also Rambam (ad loc) who puts these restrictions together, apparently following the second opinion.] The Shulchan Aruch (338:1) follows the latter, lenient opinion. The Rama (ad loc) rules that a utensil which is designed specifically to produce sound is nonetheless restricted.

(c) *Av'shah milсах* refers to loud, publicly heard sounds which are normally associated with *melacha*-restricted actions. The classic example is a water mill that is set up on Friday and continues grinding in automation on Shabbos, possibly giving the impression that work was being conducted on Shabbos. The Sages consider this to be a disgrace of the Shabbos – a *zilzul Shabbos*.

<sup>9</sup> It is on this basis that the Beis Yitzchak (loc. cit. above, n. 6) prohibits speaking into a telephone even when already connected. However, a distinction may be made between a telephone, which could potentially be listened to by numerous people, thereby warranting classification as a publicly heard sound which is restricted on Shabbos (Rama 252:5), and a hearing aid, which is not heard other than in the ear of the wearer. This may be the opinion of Minchas Yitzchak (3:41). See also Igros Moshe (Orach Chaim 4:85) and Rabbi M. Heinemann (Am HaTorah num.13, '81). See further, n. 12.

<sup>10</sup> As mentioned in the Introduction, the consensus of the Poskim is that use of such microphone systems is prohibited on Shabbos and Yom Tov. See Igros Moshe (3:55, 4:84) Minchas Shlomo (1:9 pg. 68 *d'h ach*), Har Tzvi (Tel Harim, Ma'avir 4), Minchas Yitzchak (1:37:8, 3:38), Tzitz Eliezer (3:16) and Yabia Omer (1:19-20). See also Minchas Yitzchak (3:41) who similarly distinguishes between hearing aids and microphones, as does Chelkas Yaakov (3:186).

<sup>11</sup> Therefore the *gezeirah shema yitakein klei shir* does not apply. See above note 8(a). [Public microphone systems may be closer to inclusion in this *gezeirah*, since they are widely used in musical contexts (e.g. by bands, singers).]

<sup>12</sup> This eliminates the concern for *av'shah milсах* and *zilzul Shabbos*. See above note 8(c). It may also resolve the issue of *oludei kolah* (see above n. 8b), which according to some Poskim applies only to loud sounds, not to such faint sounds as the tick of a clock, the hum of a tuning fork, or a soft tapping with one's finger when keeping tune [see Yabia Omer (3:22:3), citing K'sav Sofer (Orach Chaim 74) and Mahar"i Assad in Yehudah Ya'aleh (93)]. Rav Shlomo Zalman himself is of the opinion that the restriction of *oludei kolah* requires an action that produces sound, but does not apply to mere speech [see Minchas Shlomo (1:9 p. 67 *d'h oludei*)]. In this he differs with the Beis Yitzchak even regarding the telephone, and hence he permits the hearing aid (ibid p. 74 end of *d'h aval*). He cites support for this position (ibid p. 67 end of *d'h ulam*) from the Shvus Yaakov (3:31) referenced by the Beis Yitzchak himself, as well as (ibid end of *d'h v'ha'yah*) from the Rama (Orach Chaim 338:1) regarding whistling, and the Aruch Hashulchan (338:8) regarding a tuning fork. [Evidently he remained of his opinion on this issue of *oludei kolah/ hashmo'as kol*, even after quoting the Beis Yitzchak (ibid p. 67 beginning of *d'h ulam*), and relied on it in making his aforementioned ruling permitting speaking to a hearing aid wearer, notwithstanding his acceptance of the ruling of the Beis Yitzchak that completing a circuit does fall under the restriction of *molid* (ibid p. 74 *d'h nisba'er*).] See also Minchas Yitzchak (2:18).

<sup>13</sup> An additional basis of leniency is found in the Mishnah Berurah (338:1, Biur Halacha *d'h ho'il*) that in case of great need (*b'sha'as hadchak*) one may rely on the opinions that the restriction of *mashmia kol* is limited to musical types of sounds, not speech. Rav L. Y. Halprin in his Ma'aseh Choshev (2:5:7-8). The hearing aid wearer's

permissible to speak directly to hearing aid wearers on Shabbos and Yom Tov,<sup>14</sup> even though it is prohibited to speak into a public address (P.A.) microphone system.<sup>15</sup>

### ***Speaking to Cochlear Implant Recipients on Shabbos and Yom Tov***

Cochlear implants, as a more recent development,<sup>16</sup> have not yet been dealt with in Halacha as extensively as have hearing aids. Although they have much in common with hearing aids, it is necessary to understand their unique technology in order to properly establish their Halachic status.

Essentially, instead of converting the electronic signals produced by the microphone back into acoustic sound waves, and delivering them in amplified form to the middle ear, as do hearing aids, cochlear implants send the electronic sound signals directly to the auditory nerve, bypassing both the middle ear and the affected cochlea, the actual site of most sensori-neural hearing losses.<sup>17</sup> This is accomplished via a transmitter-coil located and magnetically secured directly above the internal implant. This coil transmits these signals via radio waves to the implanted receiver, which then sends them through an electrode array surgically implanted into the inner ear (cochlea), where they stimulate the auditory nerve, which then carries them to the hearing center of the brain. Halachically, the various electronic signals transmitted by the implant system are comparable to those of hearing aids. They do not complete any circuitry (providing that the unit has been turned on beforehand);<sup>18</sup> do not cause any combustive reaction;<sup>19</sup> do

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dependency on it can certainly be considered a situation of great need. See also Minchas Yitzchak (3:41:7,15) who finds a possible basis for such a leniency in the Halachic concern for human dignity (*kavod hab'rios*).

<sup>14</sup> The same is true as well with respect to a parent testing a child's hearing aid through a listening tube.

<sup>15</sup> See Minchas Shlomo (ibid p. 74 end of *d''h aval nireh*), as well the various other sources cited above. Cf. Igros Moshe (Orach Chaim 4:85) who considers it preferable to avoid speaking directly to a hearing aid wearer whenever feasible, based on an admitted unfamiliarity with the technologies involved. Rav Shlomo Zalman's clear rulings, based upon his extensive work and writings on this topic, may well be authoritative, but certainly this opinion, in conjunction with the many other Poskim cited who similarly permit speaking directly to hearing aid wearers, can be relied upon *l'halacha u'limaaseh*.

<sup>16</sup> The first implantation to a child was performed in or about 1986 (in Toronto's Children's Hospital, to a Jewish boy whom I have met). Tens of thousands of adults and children worldwide have received implants since then.

<sup>17</sup> Damage to these hair cells is most often the cause of common deafness (also referred to as sensorineural hearing loss, or nerve deafness), rather than to the auditory nerve, which is rarely damaged. The more hair cells damaged, the greater the degree of hearing loss. Hence, the benefit of the cochlear implant, which bypasses these hair cells.

<sup>18</sup> Thereby avoiding the restriction of *mitakein manah*.

<sup>19</sup> Eliminating the *melacha* of *ha'avarah*; see above, note 5.

not last for any duration of time;<sup>20</sup> and are produced by vocal speech alone.<sup>21</sup> They are therefore at least as permissible as hearing aids.<sup>22</sup>

Additionally, cochlear implants might even have a Halachic advantage over hearing aids in one respect. In contrast to hearing aids, which produce audible tones and might therefore be restricted according to some opinions,<sup>23</sup> the implant system does *not* produce any sounds at all.<sup>24</sup> Speaking to an implant recipient therefore completely avoids the entire issue of producing sounds on Shabbos.<sup>25</sup>

### ***L.E.D. Indicator Lights***

Use of cochlear implants has one complicating factor not found in hearing aids. The processor unit contains a little red L.E.D. indicator light, which flashes on when sound is detected. Speaking to an implant recipient automatically causes this light to go on.

However, this type of light is not comparable to most other electric lights, which may not be turned on during Shabbos or Yom Tov.<sup>26</sup> L.E.D.'s (Light Emitting Diodes) are composed of semi-conductors that glow when current passes through them, not due to heat production nor to the burning of any material – in contrast to conventional light bulbs, whose light emits from a burning filament<sup>27</sup> or a heated element.<sup>28</sup> The prohibition against kindling a fire on Shabbos applies specifically to a flame, defined as (a) a source of heat; (b) that emits light; and/or (c) consumes the material that it burns on.<sup>29</sup>

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<sup>20</sup> One resolution of the issue of *molid*; see above, note 7.

<sup>21</sup> Therefore not included in the *gezeirah shema yitakein klei shir*; see above note 8a.

<sup>22</sup> Rav Levi Yitzchak Halprin, Director of the Institute for Science and Halacha in Jerusalem, issued a statement in December '96 regarding cochlear implants and Shabbos. After a brief description of the components of this device, he notes that the Halachic issues previously dealt with regarding hearing aids, referencing his Ma'aseh Choshev (2:5), relate equally to cochlear implants, with the additional issue of the L.E.D. lights (see clarification on this subject further in this chapter).

<sup>23</sup> The opinion of the Beis Yitzchak regarding telephones might apply to hearing aids as well, although there may be grounds to differentiate between them, see above, note 11.

<sup>24</sup> The fact that the implant does not reproduce sound, may have a significant impact regarding the fulfillment of Mitzvos (e.g. Kiddush, Havdala, Megilla, and even Shofar) heard through this means. See further Part II Chapter 2.

<sup>25</sup> See below re placing the coil upon the head of the C.I. wearer.

<sup>26</sup> *Hav'arah*, igniting or burning fire, is prohibited only on Shabbos, not on Yom Tov. Even so, lighting a new flame is Rabbinically restricted (Mishnah Beitzah 33a) due to its creative nature (*molid*). See below (n. 32) whether this restriction applies to the momentary flash of this indicator light.

<sup>27</sup> As does an incandescent bulb.

<sup>28</sup> As present in the starter of a fluorescent bulb.

<sup>29</sup> The consensus of the Poskim is that the *melacha* of *ma'avir* requires both heat and light, while consumption of material is debated. The Shulchan Aruch HaRav (495 n. 2) writes that *ma'avir* does not require burning anything up, while the Avnei Nezer (Orach Chaim 238) disagrees. [See also Shu"t Maharsham 2:247 and Meorei Eish vol. I pg.

Since these conditions are not present in an L.E.D. light, speaking to an implant user does not entail *hav'ahrah*, the prohibited igniting or burning of fire on Shabbos or Yom Tov.<sup>30</sup>

Nevertheless, in the opinion of some Halachic authorities, there may be a concern for the creative aspect of causing the light to glow.<sup>31</sup> It may therefore be advisable<sup>32</sup> to cover the indicator light (e.g. with tape) before Shabbos, so that any such effect will definitely be unintentional and of no interest to the speaker. This provides additional Halachic basis to permit the use of these devices on Shabbos and Yom Tov.<sup>33</sup>

### ***Coil Attachment***

An issue has been raised as to the permissibility of placing the coil upon the head of the CI user, with concern that this effectively “turns on” the internal implant unit, which should seemingly be restricted on Shabbos and Yom Tov.

As in nearly all Halachic matters, it is critical to first clearly establish the relevant facts in order to analyze them correctly, so as to then be able to apply the appropriate Halachic rulings to them.

So, for a quick review, the CI system is composed of an external processor unit that is connected by a cable to the coil transmitter, and an internal receiver unit which is connected to the electrode array that is implanted into the inner ear (cochlea). The processor receives speech and other sounds via its microphone, converts them into electrical signals, encoded per the specific volume and pitch of the sounds received.<sup>34</sup> It

300 n. 4, who agree in principle that the *melacha* of *maavir* requires burning something up.] Without elevated heat and/or burning, emitting a glow alone is certainly not *ma'avir*. See Minchas Shlomo (1:12), Kashrus V'Shabbos B'mitbach Hamoderni (pg. 257-268), Ma'aseh Choshev (2:6), and Ma'arhei Lev (chap. 4).

<sup>30</sup> Rav Yehoshua Noivert, as quoted in Nishmas Avrohom (vol. 5 p. 230), specifically applies this ruling to cochlear implant indicator lights.

<sup>31</sup> See note 110, at end of Part I.

<sup>32</sup> Statement Letter from the Institute for Science and Halacha regarding cochlear implants (cited above n. 22). See also Minchas Shlomo (2:19 *d'h hein amnom*) for a concern regarding neon lights, which may provide additional reason to cover these lights.

<sup>33</sup> Based on the Halachic principles of *davar sh'eino miskavein, p'sik reisha d'lo ichpas lei, p'sik reisha b'drabanan* and *mis'aseik*. See Mishnah Berurah (321:55) re *p'sik reisah b'drabanan*, and (658:7) that *b'sha'as ha'dchak* one may be lenient regarding *molid* when unintended. See also Tzitz Eliezer (6:6:15) and Minchas Yitzchak (3:41:5-6) who apply this to hearing aids, especially when unaware of the resulting effect. See also Yabia Omer (9:35) regarding automatic surveillance cameras (as well as motion detectors), which he permits based on the rule of *p'sik reisha d'lo ichpas lei b'drabanan*, and brings that Rav Shlomo Zalman concurred with him on this ruling.

<sup>34</sup> The signal-code contains information that determines how much electrical current will be sent to the different electrodes, and is decoded in the internal unit. The specific electrical signal indicated by the processor's code is

then transmits these signals to the implanted unit via radio waves by means of the transmitter-coil that is placed upon and magnetically attached to the user's head, directly above the internal implant. The implanted unit receives and sends the indicated signals through the electrode array, where they stimulate the auditory nerve, which then carries them to the hearing center of the brain.

Now, the external part of the CI is powered by batteries housed in the processor unit. However, the internal components contain no batteries at all. With what power then do they operate? Actually, they derive their energy from the very electronic transmissions that they receive from the external units. These electro-magnetic waves, in addition to being encoded with information that determines the signals sent to the electrodes, contain electric power, which the internal unit is designed to capture and utilize.<sup>35</sup> The internal device, having very little power storage, is entirely dependent upon the coil and processor for energy. Removing the processor and coil from the implant is therefore the equivalent of removing the battery from a battery-powered device.<sup>36</sup> When the external processor is then resituated on the head, it immediately transmits power to the internal device, which then "wakes up" and begins to operate again.<sup>37</sup>

Thus, placement of the outer components on the CI user's head does in fact energize and activate the implanted parts, albeit without completing any physical circuits and without any wiring connecting the internal device to the energy source. This might constitute one of the 39 primary actions (*melachos*) forbidden on Shabbos by Torah Law, according to some Poskim,<sup>38</sup> while other Poskim would consider it to only involve a

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passed down the appropriate lead wires to the selected electrodes. The *amount of electrical current* determines the sounds' volume, while the *position of the stimulating electrodes* within the cochlea determines the frequency or pitch of the sounds. [Information received from email correspondence with technical experts at Advanced Bionics Corp and at Medel Corp., August '14, as well as information readily available online from the CI manufacturers.]

<sup>35</sup> The internal unit has an antenna, arranged in a loop, that translates the electro-magnetic waves into electric high-frequency signals. These signals go to several sub-systems, one of which is the power sub-system. In this circuit, the signal is "rectified" inside the implant, whereby the negative/positive alterations in the waveform become a strictly positive, smooth signal, very much like that of a battery (ibid).

<sup>36</sup> Although there is circuitry in the implant for short-time storage to stabilize the system, the device powers down within about 1/4 of a second (ibid), which is Halachically equivalent to being immediate.

<sup>37</sup> The overall start-up of the implant takes about 1 second, due to various self-calibration functions that the implant performs on start-up (ibid). This, too, is Halachically considered immediate.

<sup>38</sup> This is based on the opinion of Chazon Ish (O"Ch 50:9; see above, fn. 4) that turning an electronic device on is a constructive activity similar to the *melacha* of *boneh*. However, the Chazon Ish seems to link this to a tangible

Rabbinic restriction.<sup>39</sup> When done with a *shinui*, that is, not in the usual manner, it would definitely be a Rabbinic prohibition at most. This provides Halachic basis for leniency when needed to alleviate an otherwise exceedingly difficult situation, such as being unable to hear and communicate effectively for the duration of the day.<sup>40</sup>

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action, such as completing a circuit, plugging the wire into an outlet, or turning the switch on. In his letters to Rav Sh. Z. Auerbach (published in *Minchas Shlomo* (1:11 p. 93), the Chazon Ish seems to also emphasize the factor of physical connection, together with the concept that introducing electric energy into an otherwise inert object constitutes *boneh*. Placing the CI coil over the implant, on the other hand, makes no physical connection, even though it transmits electricity to and activates the implant. Additionally, the Chazon Ish specifically addresses appliances that are attached or plugged into the ground, where *boneh* primarily applies, as opposed to *keilim* like implants. It is therefore not certain that this would be a real *melacha* even according to the Chazon Ish.

<sup>39</sup> Dayan Weiss z"l (*Minchas Yitzchak* 8:26), Rav Ovadia Yosef z"l (*Yabea Omer* 7:15) and Rav Shmuel Wozver z"l (*Shevet HaLevi* 1:121) all wrote that the Chazon Ish's novel application of the concept of *boneh* to electricity is a singular opinion not generally accepted by other Poskim (although many contemporary Poskim in Israel today do follow it); see also Rav Shlomo Zalman Auerbach (*Minchas Shlomo* 1:11).

The Beis Yitzchak (see above, fn. 6) ruled that activation of an electronic device on Shabbos falls under the Rabbinic restriction of *molid*, comparing the creation of a new flow of current to scenting a garment with fragrance and kindling a fire on Yom Tov. This would seem most applicable to energizing the implant as well. Accordingly, it should be permitted to be done with a *shinui*, but not in the regular way (see next note).

An exception can be made to allow an implanted child below *bar/bas mitzvah* age to put the coil on and take it off without any *shinui* (*Teshuvos V'Hanhagos* (6:86), citing *Biur Halacha* (343:1).

<sup>40</sup> A Rabbinic restriction is definitely permitted to be done with a *shinui* for someone in significant pain or distress (see *Mishna Berura* 328:57, 107), and many reliable Poskim permit even a real *melacha* with a *shinui* for such needs (see *Shulchan Aruch HaRav* 328:19-20, *Shmiras Shabbos K'Hilchaso* 33:17\*). To be incapable of communicating normally with others, and to be excluded from participation in Shul services and social gatherings, can cause unreasonable distress and embarrassment (see Rav Sh. Z. Auerbach, cited above pg. 1; see *Teshuvos HaRabbonim in Kuntrus Yair Li Ozen*, published by Machon Shema Kolenu 2011, for numerous contemporary Poskim who concur with this leniency. *cf.* *Teshuvos V'Hanhagos*, loc. cit.) See in particular *Teshuva* of Rav Moseson, par. 3, in *Yair Li Ozen* pg 76-78 who most fully addresses the issues involved herein and concludes that it is preferable to replace it upon the user's head with a *shinui* when easily feasible, but not as a mandatory requirement.

## Chapter Two

### Managing Hearing Devices on Shabbos and Yom Tov

#### Volume Adjustment

Another significant ruling of Rav Shlomo Zalman is that it is permissible to adjust the volume of an aid during Shabbos, i.e. to turn it higher or lower, providing that it is not turned off.<sup>41</sup> Such adjustments, he explains, merely regulate the strength of the current that flows continuously through the amplifier, without creating or connecting anything new, and therefore does not violate any Shabbos restriction.<sup>42</sup> This leniency applies to hearing aids that use a regulator dial to control volume, whether analog<sup>43</sup> or digital types of hearing aids.<sup>44</sup> However, adjusting models in which volume is controlled by means of a switch or a button may not be permissible on Shabbos or Yom Tov.<sup>45</sup>

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<sup>41</sup> Minchas Shlomo (1:9 pg. 74 *d"h v'al kol panim*); Shemiras Shabbos K'Hilchasa (34:28); and Lev Avrohom (1:6:132). See also Be'er Moshe (1:17) who concurs with this opinion. See also Minchas Shlomo (2:21:5) for a similar ruling regarding lowering the volume of a radio that went on during Shabbos. See also Ma'alot B'Shabbat (Chapter 13) for a lengthy explanation of this opinion, relating to the various Halachic concerns such as *boneh* and *molid*, and Ma'arhei Lev (chapter 2 *nispach* 2) for an Halachic analysis of the electronics involved in regulating various types of current, from a very technical perspective. [To date I know of no contemporary Poskim who permit speaking to hearing aid wearers yet prohibit volume adjustment (not to be confused with activation of both hearing aids and all other electronic devices, which is prohibited according to all Poskim, see above n. 6).]

<sup>42</sup> *Ha'avarah* and *boneh* are not applicable to a pre-activated circuit. Regarding *molid*, even if this restriction would apply to the use of a telephone or hearing aid (see Chapter 1 n. 8, 9,12), Rav Shlomo Zalman points out that the Gemara (Beitzta 23a) limits the restriction of *molid* to an initial creation, such as introducing a fragrant smell into a garment, but not to an increase of such fragrance. Raising the volume is similarly merely an increase of existent current, and not an initiation of anything new. [Cf. Ma'aseh Choshev (1:1:17 and 2:5:2-3) who postulates that the increased volume might not merely add more of the same, but may serve distinctly different purposes, and could possibly be considered *molid*. However, the comparison of an increase in volume to the introduction of a new and different fragrance, postulating that an increase of an existent current can be considered like an introduction of an entirely new element, is certainly not simple, and was presented only as a *sopheik*, not a *psak*. As previously stated, we have relied herein on the Halachic rulings of Rav Shlomo Zalman, *v'ein safek shelo motzei midei vadai shel HaGRaShaZ, v'divrei harav shomeim*.]

<sup>43</sup> Analog sound processing means that the sounds received through the microphone are transmitted to the amplifier and speaker in one unified electronic signal, all portions of which are amplified equally. Digital hearing aids contain a tiny computer chip that processes sounds received by the microphone digitally before transmitting them to the speaker. This means that the incoming sounds are digitized (i.e. converted into digital signals composed of series of numbers that measure the pitch and volume of each instant of sound) and manipulated in accordance with the prescribed program, through which process sounds of different frequencies (e.g. vowels, consonants, background noise) can be amplified at varied levels, precisely customized to serve the user's particular needs.

<sup>44</sup> Digital hearing aids can self-adjust their own volume settings, by automatically measuring the sounds they receive thousands of times per second, and usually do not need any manual adjustment. Some models are equipped with a regulator dial, with which the user can manually adjust the volume, overriding the internal automatic system. These regulators are essentially identical to those used in analog models. Although they respond "digitally" to the

**On-Off Switch**

To turn an aid on, though, or to replace its battery, is equivalent to activating any electrical device, and is hence forbidden.<sup>46</sup> To turn it off (e.g. as before going to sleep) is likewise prohibited, just as turning off any electronic appliance would be.<sup>47</sup> Care should be taken before Shabbos to check that the aid is turned on, and that the battery is properly charged or has been recently changed.<sup>48</sup>

regulator's adjustment (i.e. processing the sound so as to provide the amount of gain called for by the adjustment of the regulator), this does not seem to alter any of the essential principles upon which Rav Shlomo Zalman based his ruling that conventional volume regulation is permissible. However, models that are equipped with a switch or control-button instead of a regulator dial, may not be manually adjusted on Shabbos or Yom Tov, as follows.

<sup>45</sup> Harav's Auerbach's ruling was made regarding a regulator which merely increases or decreases the current flow, not a switch which may constitute turning certain electrical components on and/or off. Some contemporary Poskim permit adjusting the volume of these devices as well, if done with a *shinui* (see *Iair Li Ozen*, cited in Chap. 1 n. 40). However, the leniency of a *shinui* is Halachically warranted only when necessary to alleviate significant pain or distress (note cited), so although most Poskim consider the basic use of hearing devices to be such a necessity (*ibid*), volume adjustments are often made for less pressing reasons which may not be valid basis to invoke this leniency.

<sup>46</sup> This is the consensus of all Poskim, *l'Halacha u'lmaaseh*, although they reach this conclusion on varied bases. See Rav Henkin (*Aidus L'Yisroel* p. 122, and in letter published in *Minchas Shlomo* 2:18:1); Tzitz Eliezer (6:6:1, 7:11, quoting also from the Tchebiner Rav); *Minchas Yitzchak* (1:37, 2:112, 3:41); *Be'er Moshe* (1:17); *Chelkas Yaakov* (2:41); *Yabia Omer* (1:19); *Mishpatei Uziel* (11 p. 253); *Ma'aseh Choshev* (2:6); *Yesodei Yeshurun* (5 p. 139); *Shmiras Shabbos K'Hilchasa* (34:28); *Lev Avrohom* (1:6:132); *Nishmas Avrohom* (5 p. 230 :148); and *Hilchos Rophim U'Refuah* (2:6:5).

Although Rav Shlomo Zalman (*Minchas Shlomo* 1:9 pg. 69-74) would have found Halachic grounds for permitting activation of hearing aids on Shabbos, and would have theoretically ruled accordingly in situations of great need, his conclusion was *k'var horeh zokein*, accepting the senior opinion of the Beis Yitzchak as authoritative (see Chap. 1 n. 8) that it is indeed included in the prohibition of *molid*. Hence, he withheld from permitting turning it on, even b'makom tzorech gadol. Rav Shlomo Zalman likewise prefaces the publication of his written exchange with the Chazon Ish with the disclaimer that he wouldn't actually disagree with the Halacha as per the Chazon Ish's rulings (*ibid* 1:9 pg. 92). This premise is evident as well throughout his extensive writings on related issues, from volume adjustment to opening refrigerators to using elevators, as well as from his teachings as reflected in the *Shmiras Shabbos K'Hilchasa* and *Lev Avrohom*. See also *Yabia Omer* (1:19:18) who quotes Rav Shlomo Zalman as permitting to speak into a telephone (as above, Chap. 1 n. 14), but not to pick up the receiver, which would activate the connection, which he did not permit. Some even cite that Rav Shlomo Zalman went so far as to forbid activating electronics even through a non-Jew even in cases of loss or pain, for concern that it involved a *melacha d'oraisa*.

[In light of his consistent position throughout his writings, his comment in vol. II 21:1 that it is permitted like turning on an electric fan must be understood as theoretically only (in *lumdus*), to illustrate his thesis that using a device in its normal manner is not like fixing it and is not considered *metaken mana*, but not to allow it in practice.]

**Allowing this could easily be extended to permit activating many other types of electronics and to engage in an ever expanding list of activities done electronically - which would be a terrible *michshal*, *chas v'Shalom*.**

This is emphasized herein so as to avert such a *michshal* that could *chalila* result from statements regrettably published in a recent issue of the *Journal of Contemporary Halacha*, as well as in *Iair Li Ozen* (*loc. cit.*), that there is an Halachic opinion that actually permits activating hearing aids, and that merely recommends trying to do so beforehand when feasible, attributing this position to Rav Shlomo Zalman. As referenced above, this is not his conclusion *l'maaseh* as expressed in his extensive writings on this matter, much as he argued this point at length, nor is it borne out in the *seforim* of his *talmidim*, as cited above.

<sup>47</sup> Turning an electrical device off would constitute either a *melacha* of *soseir*, albeit as a *melacha she'eina tzriecha l'gufo*, or various other Rabbinic restrictions.

<sup>48</sup> Hearing aid batteries of the zinc-air type (in contrast to the mercury-alkaline types) usually last about one week, when on all day and off at night. Changing them right beforehand provides reliable power through Shabbos, and even for a two or three day Yom Tov. For cochlear implants, disposable (non-rechargeable) AA batteries often last

### ***Taping Battery Compartment***

Some authorities require taping over the on-off switch, to safeguard against accidentally turning it off, similar to the "*blech*" used to cover a stove's burners and controls on Shabbos.<sup>49</sup> It may be advisable to tape over the battery compartment as well, especially in the case of very young hearing aid wearers, who may be prone to play with their devices which might come thereby to be turned off during Shabbos.

### **Feedback Noise**

Acoustical feedback, that squealing noise produced by hearing aids when the earmold-speaker is exposed too close to the microphone-receiver causing an oscillating effect in the air between them, should be avoided, so that the aid does not become a loud noise producing device, similar to a public-address microphone system.<sup>50</sup> To turn an aid off upon removal, as is the usual weekday practice, and then to reactivate it when it is put back on, is not permissible on Shabbos.<sup>51</sup> However, feedback can be effectively eliminated by lowering the volume to its lowest setting,<sup>52</sup> preferably prior to removal, without turning it off.<sup>53</sup> Although the unit is still on, the lowered signal is too weak to have the oscillating effect that produces the feedback noise. Alternatively, some have the practice to plug up the opening of the earmold-speaker unit (e.g., with a round toothpick, rolled tissue or thin cotton swab) immediately upon removal.<sup>54</sup> This method may be particularly appropriate for use with such hearing aids (i.e., many digital models)

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up to 24 hours, which may suffice for Shabbos, but not for longer Yomim Tovim. [Battery life varies for different devices and models, and with different settings and usages.]

- **See below (Chapter 4) regarding changing batteries on Shabbos and Yom Tov.**

<sup>49</sup> Rav Henkin, first in his correspondence with Rav Shlomo Zalman (loc. cit. n. 6), and later in *Aidus L'Yisroel* (p. 122). This is also the opinion of Tzitz Eliezer (6:6:6 *d''h elah*). Rav Shlomo Zalman himself disagrees, stating that this requirement was only enacted to prevent adjusting a flame while it's being used, but not to avoid extinguishing it when not in use, and is therefore not applicable to hearing aids. *Igros Moshe* (3:50 *d''h U'mitzad*), expresses a similar opinion in reference to an adjustable switch, and (5:22:28) more directly regarding electric switches, comparing appliances to wall switches which do not need to be covered, but concludes that in situations wherein there is concern that it may be switched off during Shabbos, it is recommended to cover it beforehand.

<sup>50</sup> See above, Chapter 1 n. 8(c).

<sup>51</sup> As explained above in this chapter.

<sup>52</sup> As per the ruling of Rav Shlomo Zalman, see above note 1.

<sup>53</sup> Most hearing aid models (that I am familiar with) have a volume control separate from the on/off switch.

<sup>54</sup> This practice seems to have been prevalent prior to the ruling permitting volume adjustment, as above n. 1.

whose volume cannot be manually lowered or which utilize a switch or button to adjust volume, use of which may be restricted on Shabbos and Yom Tov.<sup>55</sup>

### **Alternating Settings**

It should also be noted that the activation switch on hearing aids often has a third setting, too. In addition to the “M” (microphone) setting for turning it on, and the “O” for turning it off, there is also a “T” (telephone) setting. This T setting changes the internal function of the aid, which is activated when on M, to a special telephone-coil system<sup>56</sup> designed for use with telephones and certain other electronic devices, including assisted listening systems (e.g. loop systems) found in some public buildings and auditoriums. Switching the setting from T to M significantly alters the utility of the aid, and is hence not permissible on Shabbos or Yom Tov, falling under the prohibition of *metakein-mannah*, fixing a utensil.<sup>57</sup> In case the setting gets accidentally switched from M to T, it would be the equivalent of the aid having been turned off, and switching it back to M would be similarly restricted.<sup>58</sup> For this reason as well, it is advisable to tape the switch in the correct position in advance, so as to avoid such problems during Shabbos.

### **Directional Devices**

Some hearing aid technologies provide for improved noise reduction through use of a dual microphone system. This means that the device is fitted with two separate microphones, one towards the front of the unit and the other further back. Switching between these two microphones allows the user to focus on the desired sound (e.g. speech) and to greatly reduce interference from other sounds in the area (e.g.

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<sup>55</sup> See above, re Volume Adjustment, n. 45.

<sup>56</sup> In contrast to the normal function of hearing devices (all types), which respond to natural acoustical sounds (i.e. sounds waves), the telephone coil responds to electro-magnetic signals transmitted by telephones and loop systems.

<sup>57</sup> From conversation with Dayan Chanoch Ehrentreh of the London Bais Din, November '88. See also Ma'aseh Choshev (3:16, in his conclusions) who advises wearing one hearing aid set on “M”, while leaving another where it would be used in connection with a loop system (e.g. in Shul), set beforehand on “T”.

[This consideration does not apply to models which automatically adjust their settings without need for manual switching, or which have dual-capability for receiving both types of sound.]

<sup>58</sup> It should be noted that according to Rav Shlomo Zalman's thesis that adjustments made during normative usage are not considered *metakein mannah*, this would constitute at most a rabbinic restriction and would therefore be permitted to be done via a non-Jew or, I cases of great need, with a *shinui* (see Chapter 1 n. 40).

background noise). Some such devices are equipped with a button with which the user can manually choose the best setting. This may not be done on Shabbos or Yom Tov, because it is equivalent to turning one system on and another one off.<sup>59</sup> Hearing aids of this type may be worn without using the directional button.<sup>60</sup>

### ***Cochlear Implant Settings***

Cochlear implant processor units<sup>61</sup> may have three manual dials: 1) a program dial,<sup>62</sup> with which the user can switch between alternative programs (typically customized for use in noisier or quieter environments); 2) a volume-comfort dial, which allows the user to adjust the range of volume to the most comfortable level (i.e., rather than adjusting the actual volume, it sets the upper and lower limits of volume output); and 3) a sensitivity dial, which adjusts the top and bottom of the range of input sounds (i.e. sensitizing the unit to respond to higher or lower sounds it receives), which can be helpful in listening to hard-to-hear soft or "far" sounds.

Changing the program is similar to switching between the "M" and "T" settings on a hearing aid, and should therefore be similarly restricted,<sup>63</sup> while adjusting the volume/comfort level or the sensitivity appears comparable to volume adjustment in regulator-type hearing aids, and hence permitted.

It should be noted that remote control units and phone apps that can control CI volume and programs cannot be used on Shabbos and Yom Tov.<sup>64</sup>

### ***Wire Replacement***

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<sup>59</sup> The advantage provided by the directional function is generally not significant enough to warrant permitting such adjustments – even with a *shinui* (see above n. 45).

<sup>60</sup> Based on information obtained from GN ReSound through Mrs. Miriam Singal, an audiologist in Baltimore.

<sup>61</sup> This description applies specifically to pocket-style processors. Behind-The-Ear (BTE) processors may have just one control-switch for all functions, which may not be used on Shabbos or Yom Tov.

<sup>62</sup> In some models, there may be a simpler "function" dial instead, which switches between normal and "noise suppression" settings. These seem similar to the "program control" in regard to the Halachic considerations addressed herein.

<sup>63</sup> This needs further clarification, because a significant distinction may be made between them, in that switching between M and T turns one system off and another on, while the program dial does not turn anything on or off, but merely instructs the digital functions to follow an alternative program. Thus, such an adjustment may be Halachically equal to adjusting the volume, which many Poskim permit. However, see above, note 45.

<sup>64</sup> See above, note 45. The remote control and phone app devices, even if left on throughout the day, involve numerous additional issues which certainly prohibit their usage on Shabbos and Yom Tov.

In case functional parts of a hearing device (e.g., the long or short wires of a cochlear implant) became damaged on Shabbos, their replacement would essentially constitute repairing the device, rendering it useful again, and would be prohibited on both Shabbos and Yom Tov.<sup>65</sup> However, wires that were simply disconnected from the CI unit and can be easily reattached in no more permanent attachment than previously, may be permitted to put back into place on Shabbos and Yom Tov.<sup>66</sup>

### ***Earmold and Tubing Maintenance***

Replacing ear-molds or tubing of hearing aid is permissible, since the device is fully functional without it.<sup>67</sup> Cleaning and removing ear-wax from an ear-mold or tubing is likewise permissible. Even if the mold or tubing is totally blocked-up, such that it does not allow any passage of sound at all, it may be cleaned out in case of need (i.e. for an individual who is dependent on both of his aids and is unable to suffice with the other unit alone) according to reliable Poskim.<sup>68</sup>

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<sup>65</sup> See Minchas Shlomo (2:18:1), regarding the replacement of a hearing aid battery. His basis is the prohibition of replacing a shoelace (Shulchan Aruch 317:2), which the Mishnah Berurah (ad. loc. 16) explains as being *mitakein manah*. The same should apply to these wires as well. This is further evident from the discussion of the Minchas Shlomo (loc. cit.) regarding activation of hearing aids, which he predicates on the premise that no new part has to be attached that was not previously part of the aid, indicating that such attachment would not be permitted.

<sup>66</sup> As evident from the *Halacha* regarding replacing shoelaces (see previous note). See also Mishna Berura 308:72 citing Magen Avraham who permits reattaching that which is always loosely attached – as is the case with CI wire attachments – such that there is no concern that it will be reattached in a more permanent manner.

<sup>67</sup> The aid functions continuously whether or not an ear-mold is attached. The ear-mold simply brings the sound emitted by the aid into the user's ear, similar to an inverted cone that the hard-of-hearing may place in their ear on Shaabos or Yom Tov [as evident from Halachos Ketanos (2:45, cited by Be'er Heiteiv and Mishnah Berurah 589:4) in regard to using such a cone to hear the *shofar* on Rosh Hashana (see also Minchas Yitzchak 2:18 who derives from this Halachos Ketanos a basis of leniency regarding sound production).

<sup>68</sup> See Shmiras Shabbos K'Hilchasa (12:17) who permits plunging a toilet on Shabbos, notwithstanding the Gemorah (Kesuvos 60a) and Shulchan Aruch (336:9) regarding clearing a blockage in a gutter, which indicates that this would be considered *mitakein manah* and prohibited other than under limited conditions. Rav Shlomo Zalman (ad. loc. n. 50, and in Minchas Shlomo 2:13:3) compares the blocked pipe of the toilet or sink to a clogged bottle-neck, which he assumes to be permissible to clear, similar to reopening an opening to a barrel of wine (see Shulchan Aruch 314:3 and Mishnah Berurah ad. loc. 17). See also Minchas Yitzchak (5:75) who compares it to a plug in a drain; and Be'er Moshe (1:29, 3:70) who argues at length that removal of foreign material that causes the blockage in the pipe does not constitute creating a new opening. Yabia Omer (5:33) disputes Rav Shlomo Zalman's opinion, arguing that this would constitute a *melacha d'oraisah* which is prohibited even in cases of great need. He concludes that plunging is permitted only when the pipe is not totally blocked, and quotes Rav Elyashiv as being in agreement with him. However, even the Yabia Omer disagrees with Rav Shlomo Zalman only regarding a pipe that is connected to the ground, as opposed to a moveable object such as a barrel, citing Mishnah Berurah (314 Sha'ar Hatzion 9) for this distinction. Accordingly, in regard to the tubing and ear-molds of hearing aids, there are clear grounds to permit removing a wax blockage, at least in situations of need, as Rav Shlomo Zalman concludes (Shmiras Shabbos K'Hilchasa loc. cit.) to permit it *b'sha'as hadchak* and *b'mokom tzorech gadol*.

### Chapter Three

#### *Wearing Hearing Devices Outside on Shabbos*

#### Hearing Aids and Cochlear Implants

Carrying any useful items outside, into or in a public domain (a *reshus harabim*, i.e. an open area of public access and travel) is one of the thirty-nine types of activities (*melachos*) that are Biblically forbidden on Shabbos.<sup>69</sup> This poses a potentially serious issue regarding the permissibility of wearing electronic hearing devices when going out and about in such areas.<sup>70</sup>

However, the Halacha distinguishes between that which is classified as carrying and hence prohibited, and that which is considered to be wearing, and permitted. As indicated in the words of the Navi Yirmiyahu (17:22)<sup>71</sup> “*Lo totzee’u masah mi’bateichem b’yom haShabbos*” – Do not carry a burden out from your homes on the Sabbath day, only that which is considered to be a “burden”, i.e. an item being transported to another location, is forbidden to be carried outside on Shabbos.<sup>72</sup> Thus, it is obvious that clothing worn by a person is not restricted, for it cannot accurately be defined as a burden, being transported elsewhere. Rather, it is situated exactly where it needs to be to best serve its user, namely being worn on his body. Similarly, jewelry and ornaments that adorn their wearer are permitted to be worn wherever he may go on Shabbos, since they are likewise not burdens being carried, but adornments being worn.<sup>73</sup>

<sup>69</sup> Fully defined in Shulchan Aruch Orach Chaim (345), as well as areas in which carrying is Rabbinically restricted.

<sup>70</sup> Indeed, numerous Halachic opinions found no basis to permit wearing a hearing aid outside on Shabbos. Rav Tzvi Pesach Frank in Har Tzvi (1:173) considers hearing aids more comparable to a pocket-watch than to eyeglasses, and therefore permits only the type of aid that is built into an eyeglass frame, being an independently wearable item, but not the body or behind-the-ear (or other ear-level) types. Rav Henkin in Aidus L’Yisroel (pg. 122) permits wearing a body-aid outside only providing that it is sewn into the pocket of a garment. [See correspondence between Rav Henkin and Rav Shlomo Zalman debating this subject, in Minchas Shlomo (2:18).] Minchas Yitzchak (1:37) initially accepted Rav Henkin’s opinion, adding (2:18) that a behind-the-ear model should be even more permissible, but then brought (2:113) a letter to him from Rav Tzvi Pesach maintaining that it is prohibited, whereupon Dayan Weiss deferred to Rav Frank’s opinion. See also *ibid* (5:40). Shmiras Shabbos K’Hilchasa (34:28) writes that it is prohibited, but brings (n. 108) that Rav Shlomo Zalman found basis to permit it. See below (n. 13).

<sup>71</sup> Cited in Gemorah Beitzah (12a) and Horayos (4a) as a source for the prohibition regarding carrying on Shabbos.

<sup>72</sup> This criterion is established in the Gemorah Shabbos (60a), distinguishing between the Halachic definitions of a utensil (e.g. a signet ring) regarding *tumah* and regarding carrying on Shabbos. The Gemorah states - *Shabbos mishum ma’sui amar Rachmana*, the prohibition re carrying on Shabbos is dependent on whether or not an item is considered a *ma’sui*, i.e. a load or burden. See Aruch Hashulchan (301:48). See also Ma’aseh Chosev (3:11:7).

<sup>73</sup> Aruch Hashulchan and Ma’aseh Choshev (*loc. cit.*). The Ramban in Shabbos (66b) states further (regarding a foot-wrapping which does not constitute a proper shoe or sandal) that even that which is not otherwise considered a normal item of clothing, nonetheless would not constitute carrying on Shabbos when serving the needs of its wearer,

This concept, referred to in Halacha as wearing a *tachshit* (lit. an ornament), is further expanded to include items worn for medicinal, protective and/or curative purposes.<sup>74</sup> Although not ornamental in the cosmetic and fashionable sense, they are nonetheless functional accessories that service their wearer while they are worn, and are therefore comparable to clothing that is worn, rather than to burdens that are carried.<sup>75</sup> Some applications of this rule are amulets and other items proven to protect their wearer from certain illnesses;<sup>76</sup> fragrant spices worn to improve mouth or body odors;<sup>77</sup> and bandages, casts and slings worn on healing wounds and injuries.<sup>78</sup>

Electronic hearing devices such as hearing aids and cochlear implants are inherently similar to these other examples of the *tachshit* rule.<sup>79</sup> They also serve a functional purpose, that of improving the user's hearing.<sup>80</sup> Their effectiveness is well established, certainly no less than the expert amulet. They should therefore properly be regarded as

since it is not a *ma'sui*. Ma'aseh Choshev (3:11:9) reconciles this with seemingly contradictory inferences from the Gemorah Yuma (78b) and Yevamos (102b).

<sup>74</sup> Shulchan Aruch (Orach Chaim 301:22, 28). See Rashi Shabbos (60a *d''h she'eino*) and Tosfos (57a end of *d''h b'meh*) who both equate curative *tachshitim* with regular clothing as the basis of their permissibility to be worn outside.

<sup>75</sup> See Rashi Shabbos (65a *d''h v'afilu*) and Mishnah Berurah (303:69) regarding strings worn by young girls to maintain the openings in their pierced ears, which may be worn outside on Shabbos. Rashi states that although these strings are not a "*tachshit noi*", i.e. an ornamental *tachshit*, they are nonetheless permitted since they are normal to be worn (by such young girls). This provides a primary example of a non-ornamental *tachshit*, demonstrating that an item's functionality, such as maintaining a pierced ear hole, qualifies it as the equivalent of a *tachshit* in regard to wearing it outside on Shabbos, even though it is not a decorative item. Hearing devices are inherently analogous to such a *tachshit*, for they too are both functional and normal to be worn by such persons.

<sup>76</sup> Ibid (301:24, 25, 27; also 303:15). See also Rashi Shabbos (62a *d''h shelo*) and Mishnah Berurah (301:86).

<sup>77</sup> Ibid (303:15). See also Rashi Shabbos (62b *d''h k'sheyeish bah*) and Mishnah Berurah (303:30).

<sup>78</sup> See Mishnah Berurah (301:77, 108). See also ibid (301:51) and Mishnah Berurah (:180).

<sup>79</sup> This rule may also provide a Halachic basis for wearing eyeglasses on Shabbos, regardless of style and cosmetics, since they serve the functional purpose of improving the person's eyesight, and are normal to be worn. See Minchas Shabbos on Kitzur Shulchan Aruch (84:6), Tzitz Eliezer (18:15) and Shmiras Shabbos K'Hilchasa (18 n. 67), each citing many sources on this subject. These sources seem to apply the classification of *tachshit* to eyeglasses only on account of their cosmetic value, being worn to adorn and enhance one's appearance, rather than due to their functionality. However, some Poskim quoted in the Minchas Shabbos compared eyeglasses to an expert amulet, the classic case of a non-ornamental *tachshit*. Rav Shlomo Zalman cites these sources in support of his opinion that wearing hearing aids outside on Shabbos should be allowed based on the *tachshit* rule as exemplified by the amulet (see Minchas Shlomo 2:18:1 *d''h v'gam*).

[Interestingly, the Tzitz Eliezer (loc. cit.) traces a Brisker *chumrah* re not wearing eyeglasses outside on Shabbos, back to the Beis HaLevi who told the Aderes that they are not clothing and not a *tachshit*. Those who follow this *chumrah* may wish to be *machmir* re hearing aids as well. The consensus of all contemporary Poskim, however, is to permit wearing eyeglasses outside on Shabbos.]

<sup>80</sup> Although not actually curing the condition of the hearing impairment *per se*, they clearly service the body of the user by improving his hearing, through either amplification or direct delivery of the sound signals. Numerous of the applications of the *tachshit* concept cited above do not actually cure any condition, but benefit their wearer by providing protection or other benefits. Minchas Shlomo (2:18:1 *d''h ulam*). See also Bi'ur Halacha (301:22 *d''h yotzim*).

*tachshitim*, and classified as wearing rather than carrying. Accordingly, they may be worn just as any other part of a person's bodily attire, inside and outdoors, in public as in private areas.<sup>81</sup>

This rule can be applied equally to all types of hearing aids, both ear-level and body-aids, as well as to cochlear implants and their processor units, all of which functionally serve their wearer as they are being worn, and qualify to be classified as *tachshitim* which may be worn<sup>82</sup> outside on Shabbos. Although the body aid and the processor unit of an implant system are carried in a pocket or a pouch,<sup>83</sup> they nonetheless continuously serve their wearer, providing him the benefit of their functionality. They are thereby acting as legitimate *tachshitim* rather than as "burdens", being used and worn rather than carried and transported, and may therefore be worn outside on Shabbos.<sup>84</sup>

### **FM Systems**

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<sup>81</sup> See note 111, at end of Part I.

<sup>82</sup> Providing that it is worn upon one's body, and not carried in one's hand. *Minchas Shlomo* (2:18:1 *d''h v'gam lo*). See also *Magen Avrohom* (301:27) and *Livushei Sarad* (ad. loc.) that even a functional *tachshit* is never permitted to be carried in one's hand. See *Shabbos* (62a) *u'bilvad shelo yochazenu b'yado*, and *Rashi* and *Tosafos* (ad. loc.), and *Bi'ur Halacha* (301:7 *d''h kol hayotzei, v'dah* etc.). See also *Shmiras Shabbos K'Hilchasa* (1:18:12 and n. 54). [*Cf.* *Har Tzvi* (1:173) and *Minchas Yitzchak* (2:112,113), who are of the opinion that an item must be worn in the manner of clothing to qualify as a *tachshit*. With this they each differentiate between eyeglasses, which are worn in such a manner, and hearing aids. However, the case of the salt or spice carried in one's mouth (see above n. 9) provides precedent to apply the *tachshit* rule even to an object which is not worn in the conventional manner of clothing, so long as it is functional, providing benefit to its user.]

<sup>83</sup> The pouch itself, although non-functional *per se*, is secondary (*t'feila*) to the unit contained in it. By virtue of its contents (i.e. the hearing device) being permissible to be worn as a *tachshit*, the container (i.e. the pouch) is permitted as well. See *Mishnah Shabbos* (93b) wherein this principle is stated in context of items upon which one is not culpable for carrying them outside on Shabbos, extending that leniency to the container as well. Similarly, see *Rambam* (*Hil. Shabbos* 18:17) who applies this principle to a person's clothing. In an instance wherein the contents are permissible to be carried, the container should likewise receive the same status. See *Tur* (*Orach Chaim* 301, 51a) who permits carrying a person in a hand-held chair for the public need of his students. [Per the interpretation of both the *Bais Yosef* and the *Bach*. *Cf.* *D'risha* (301:15) and *Magen Avrohom* (loc. cit.) who evade this interpretation.] The sole issue dealt with is the permissibility of carrying the person in such a case, which (according to *Bais Yosef*) may be the subject of a *machlokes haRishonim*. The carrying of the chair itself is apparently not an issue, since it is not significant other than in service of the person being carried. [See *Pri Megadim* in *Mishbetzos* (301:12) who adds this element when quoting the *Bais Yosef*.] Hence we find this principle of the secondary item assuming the leniency of the primary item it serves even as basis to actually permit it to be carried out on Shabbos. See also *Rav Po'alim* (*Orach Chaim* 1:25) and *Minchas Yitzchak* (2:114:4-5).

<sup>84</sup> *Rabbi Sandler* (loc. cit. above n. 79) raises (in his n. 98) an important point. Some hearing devices, particularly cochlear implants, may be prone to cease functioning some time during Shabbos, depending on the length of the life of their batteries. Should this happen while walking outside, it would become necessary to remove them, as they are no longer functional *tachshitim* (see below Chapter 4, re non-functional devices). Accordingly, there may be grounds for concern not to go out with them even while functional, lest one come to carry them in a restricted manner should they stop working. He resolves this issue on the basis of the Halacha that in case one mistakenly went out with an item that is Rabbinically restricted on the basis of such a concern, he may continue once outside *b'dieved* (see *Mishnah Berurah* 301:61). This can be applied here even initially, based on the oft-cited rule of *Poskim* that an urgent situation (*sha'as hadchak*) is dealt with like a *b'dieved*.

Usage of personal FM systems, which provide amplification with the advantage of direct audio-input, is inherently identical to the usage of other hearing devices as described above, and is equally permissible on Shabbos. However, a significant distinction must be made between them with regard to utilizing such systems when going outside.

The FM system<sup>85</sup> consists of two units, each worn by different people. The hearing impaired person (e.g. a child or student) wears a receiver (sometimes referred to as the “student’s unit”), which either replaces or is attached to their hearing aid. Another individual (e.g. a parent or teacher) wears a second device (sometimes referred to as the “teacher’s unit”), which picks up their speech through a microphone and then transmits silent FM signals to the receiver.

The transmitter does not service the person wearing it at all; rather, it is worn solely to benefit a different person, namely the hearing impaired individual. Accordingly, this unit does not function as a *tachshit* for its wearer, and may not be worn outside on Shabbos.<sup>86</sup> This in turn affects the receiver’s status as a *tachshit* as well. Although designed to serve its wearer, its function as a receiver is entirely dependant on the FM transmissions, and would be useless outside without the transmitter.

The receiver unit alone may therefore be worn outside only if it can and has been set (from before Shabbos)<sup>87</sup> to function simultaneously as a hearing aid too, receiving and amplifying speech and other sounds independent of its FM function, such that it does indeed serve its wearer even when not receiving any FM transmissions. If, however, this unit serves as an FM receiver only, it may also not be worn outside on Shabbos.

Usage of FM systems is therefore limited to indoors only, unlike both hearing aids and cochlear implants which may be worn on Shabbos even when going outside in public areas, as explained above. It may sometimes be advisable (i.e. in case the receiver serves as a hearing aid as well and may therefore be worn outside) to leave the transmitter unit before Shabbos in such a location (e.g. in Shul) where it will be most useful on Shabbos. In other cases (i.e. when the receiver unit serves as an FM receiver only), it may be advantageous to leave the entire system in the more useful location.

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<sup>85</sup> A self contained radio-wave broadcasting system using Frequency Modulation (“FM”) in its transmissions.

<sup>86</sup> As explained above. The alternative bases for allowing hearings aids and implants to be worn outside, as cited above (n. 13), also do not apply to the transmitter, for the same reason that it does not serve the person wearing it.

<sup>87</sup> See above (chapter 2) regarding switching settings on Shabbos.

## TORAS HACHERESH I

Care should be taken to assure that the units are properly activated and set before Shabbos.

In some FM systems, the receiver unit is replaced with a “boot”, i.e. a small accessory that can be attached to a hearing aid. When the hearing aid is not functioning in the FM mode, the boot serves no purpose, and would not be considered a *tachshit*. Nonetheless, in case the boot is normally left attached to the hearing aid and worn constantly with it, it may be considered a permanent part of the hearing aid and *botul* to it, even when its FM function is not being used, and on this basis be permitted to be worn outside.<sup>88</sup> If, however, the boot is normally attached and worn only when being used (i.e. and removed when the hearing aid is not in FM mode), it would certainly not be permissible to leave it attached to the aid when going outside on Shabbos.

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<sup>88</sup> Similar to the belt of a coat or robe, or shoelaces, which are *botul* to the coat, robe or shoes even when untied, and may be worn as such even outside. Because it is normal to leave them in place, they are considered permanent parts of the garment even when not actually being used. Shmiras Shabbos K’Hilchasa (1:18:29 and n. 129) based on the Mishnah Berurah (301:135) as well as the Shulchan Aruch (301:39). [These sources in context refer to items that are sewn or tied to the garment, yet the Shmiras Shabbos equates this with a belt or laces that are merely inserted into loops or holes. The attachment of the boot to the hearing aid should be at least comparable to if not better than this.]

## Chapter Four

### **Handling Functional and Non-Functional Devices On Shabbos and Yom Tov**

#### **Muktzah Status of Functional Devices**

The handling of many items that are classified as *muktzah* is restricted on Shabbos and Yom Tov. This classification includes objects whose primary functions are prohibited actions (e.g. pens and stationery supplies, tools and hardware);<sup>89</sup> materials in unfinished states (e.g., raw wood and stone);<sup>90</sup> and such items that, due to their precious and/or delicate nature, one normally sets aside and disassociates himself from using on Shabbos and Yom Tov (e.g. a *mohe'l's* knife, precision tools, merchandise).<sup>91</sup>

So long as they are functional, hearing aids and other electronic hearing devices should not be considered *muktzah* (presuming that their use is permitted on Shabbos and Yom Tov),<sup>92</sup> since their primary usage is a permissible purpose. Accordingly, they may be handled in the course of their use.<sup>93</sup> Notwithstanding their precious and possibly

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<sup>89</sup> *Muktzah machmas milachto l'issur*. These items may be moved *litzorech gufo*, to be used for a permissible action, e.g. a hammer to chop nuts, and *litzorech mikomo*, to clear the space they occupy for use on Shabbos. Shulchan Aruch (Orach Chaim 308:3).

<sup>90</sup> *Muktzah machmas gufo*. These items may not be moved even *litzorech gufo* or *litzorech mikomo*. Rama (308:7).

<sup>91</sup> *Muktzah machmas chisaron kis*. These items may also not be moved even *litzorech gufo*, or *litzorech mikomo*. Ibid (308:1).

<sup>92</sup> See Chapter 1.

<sup>93</sup> This is certainly applicable to moving them in order to put them on, adjust their fit, or take them off. Even if they would be considered *muktzah machmas milachto l'issur*, moving them in the course of their use would be permitted as *litzorech gufo* and *litzorech mikomo*. Upon removal, one would similarly be permitted to place them wherever he prefers, as is the rule with *muktzah machmas milachto l'issur* (Shulchan Aruch 308:3).

The permissibility of moving them about from place to place for their own safekeeping when they are not in use, though, depends on whether or not they are classified as *muktzah machmas milachto l'issur*. Igros Moshe (Orach Chaim 3:49) writes that an electric fan may be considered *muktzah machmas milachto l'issur*, since its activation is a prohibited act, even though its ongoing use is not prohibited. Similarly, in Igros Moshe (Orach Chaim 5:22:22) he permits moving an electric fan to adjust the direction in which it blows because this is *litzorech gufo*, implying again that it may be considered *muktzah machmas milachto l'issur*. This might be applicable to hearing devices as well, since their activation is similarly prohibited.

However, an obvious distinction can be made between a fan, which is most often moved only when turning it on or off, while its continuous automatic function requires no further handling; and a hearing aid, which is worn and used all day long in a permissible manner, while turning it on/off constitutes a relatively minor part of its utility. Since the status of *muktzah machmas milachto l'issur* is determined according to the majority of an item's usage ("rov tashmisho") [See Mishnah Berurah (313:9) and Bi'ur Halacha (308:3 d"h Kardom)], it is quite understandable that turning a fan on may be considered its primary function (regarding its being handled), thereby rendering it *muktzah*, while a hearing aid's primary function is permissible, for which reason it would not be *muktzah*.

delicate nature, hearing aid wearers fully associate themselves with these devices and use them constantly, just as they do with all of their other regularly used possessions (i.e. even expensive jewelry and fragile crystal).<sup>94</sup> Since these items are not set aside and out of use, handling them is not restricted on Shabbos or Yom Tov.<sup>95</sup>

### ***When Devices Stop Functioning***

In the event that a hearing device stops working during Shabbos or Yom Tov (e.g. when its battery dies), it would lose the permissible status that it had as a functional device. Since in its present condition the device provides no benefit to its wearer, it can no longer be considered a *tachshit*,<sup>96</sup> and may not be worn outside.<sup>97</sup> Furthermore, once it stops functioning as a useful utensil, it would become *muktzah*, similar to a (non-ornamental) watch that stopped running.<sup>98</sup>

It must therefore be removed from one's ear or body,<sup>99</sup> providing that he is situated in a location wherein it would be safe to leave the device until after Shabbos or Yom Tov.<sup>100</sup>

A more accurate comparison may be drawn between the hearing aid and a battery-operated wristwatch. The watch is similarly activated through a prohibited act (i.e. putting in the battery), yet it is widely accepted as not being considered *muktzah machmas milachto l'issur*, presumably because its primary function (i.e. being worn and telling the time) is permissible, and it is not set aside from use on Shabbos. [See Shmiras Shabbos K'Hilchasa (1:28 n. 54), who quotes Rav Shlomo Zalman as having ruled that a watch is considered *milachto l'heter* based on this very reasoning, *u'baruch shekivanti*.] The hearing aid is essentially the same in that its primary function is permissible even though its activation is prohibited, and it is likewise not set aside and out of use on Shabbos. [See also Minchas Shlomo (1:9 pg. 75 and 2:18:1) wherein this opinion is clearly expressed, that hearing aids are not *muktzah machmas milachto l'issur*, and for the reasons stated above.]

<sup>94</sup> See Magen Avrohom (308:3), Toras Shabbos (ad. loc. 2), and Shmiras Shabbos K'Hilchasa (1:20 n. 47).

<sup>95</sup> See note 112, at end of Part I.

<sup>96</sup> See Biur Halacha (301:11 *d'h B'zeh*), Shemiras Shabbos K'Hilchasa (18:27) and Igros Moshe (Orach Chaim 1:49) who, amidst their discussions of the permissibility of wearing a wristwatch outside on Shabbos, each mention that it would not normally be worn when stopped, seemingly taking it for granted that it would be prohibited then. The same applies to a hearing aid that stopped working, since it is no longer functioning as a beneficial *tachshit*.

<sup>97</sup> This consideration, re carrying outside, obviously does not apply on Yom Tov. That of *muktzah* does.

<sup>98</sup> Minchas Shabbos (88:23) leans towards saying that a stopped watch would be *muktzah machmas gufo*, and possibly even *muktzah machmas chisaron kis*. See also Toras Shabbos (308:5). Bris Olam (*Dinei muktzah machmas gufo* 29) argues that if it just stopped but is not broken, it should be neither *muktzah machmas gufo* nor *muktzah machmas chisaron kis*. Tzitz Eliezer (9:20) similarly distinguishes between a stopped and a broken watch, holding that it maintains its status of a *tachshit* even when stopped (i.e. unwound, or needing a battery replacement), since this occurs in the course of normal usage. Rav Elyashiv, as quoted in Shalmei Yehuda (chap. 3 n. 13), rules that it is *muktzah machmas gufo*, apparently even when just stopped. See also Shemiras Shabbos K'Hilchasa (28:24). Regarding a hearing aid there may be more grounds for it to be considered *muktzah*, since it is not an item ever worn if not functioning, as opposed to a watch which one might continue wearing even after it stopped. The hearing aid therefore cannot be considered a *tachshit* when stopped, even if a watch could (as in the opinion of the Tzitz Eliezer).

<sup>99</sup> Most Poskim permit moving *muktzah* with one's body, limiting the restriction to moving it with one's hands. [See Tur (308:1), Shulchan Aruch (311:8), Magen Avrohom (305:9, 308:7) and Mishnah Berurah (308:13).] Nonetheless, continuing to wear a non-functioning hearing device on one's ear would be restricted, since this its usual manner of

If it stops working while outside (in an area not enclosed by an *eiruv*), it must be removed and left there until after Shabbos.<sup>101</sup> If feasible, one may request of a non-Jew to take it inside.<sup>102</sup> If however the hearing aid would not be safe in that location and a non-Jew is not available to take it in, its wearer may run quickly to a safe place before removing it, providing that he has been walking continuously without stopping ever since leaving the indoor area he departed from,<sup>103</sup> and then remove it in a backhanded motion<sup>104</sup> (*kil'achar yad*, i.e. through an unusual motion even with the hands, or using any other part of the body).<sup>105</sup>

Whenever removing the nonfunctional unit (even indoors), it is preferable to do so in a back-handed manner, since it is now *muktzah*, as explained above. If/when feasible, one would also be permitted to ask a non-Jew to remove it.<sup>106</sup>

### ***When Reactivation May Be Permitted***

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being worn and moved. [See Rav Shlomo Zalman's lengthy note at the conclusion of the Shemiras Shabbos K'Hilchasa (pg. 558), where he proves this principle from the Gemorah Shabbos (112a) regarding continuing to wear a torn sandal on one's foot, thereby refuting the proof brought by Chazon Ish (Orach Chaim 47:12) against these Poskim. See also Shemiras Shabbos K'Hilchasa (28 n. 59), quoting Rav Shlomo Zalman regarding continuing to wear a wristwatch that stopped. This principle is evident as well from the Poskim who disagree with the Rama (266:12) regarding continuing to wear a purse tied to one's belt (see next note). See also Tikunim U'Miluim from Rav Shlomo Zalman to Shemiras Shabbos K'Hilchasa (28 n. 59), where he cites this source to establish that even a *muktzah* item being worn and not being carried by hand must be removed. Presumably he is referring to these Poskim, while this is not apparent from the Rama himself.]

<sup>100</sup> The Rama (266:12) and Magen Avrohom (266:19; 308:7; 331:5) rule that so long as a *muktzah* item remains in one's hands, he is permitted to move it about until he sets it down, even though it was not initially permissible to be taken, and even by *muktzah machmas gufo* and *machmas chisaron kis*. According to this opinion, it would not be necessary to remove the hearing aid when it stops functioning (providing that he is in an area wherein it is permissible to carry). However, many Poskim disagree, either limiting this leniency to *muktzah machmas milachto l'issur* alone (see Even Ha'ozar 266 and Derech Chaim cited in Mishnah Berurah 308:13, and more fully in Biur Halacha 266:12 *d'h yachol*), or to when the initial handling of the *muktzah* was permitted (see Bi'ur HaGr"a Orach Chaim 266:12 and Yoreh De'ah 266:3, also cited in Mishnah Berurah loc. cit.). The Mishnah Berurah (266:35) finds basis to be lenient in a situation of potential loss. See Shemiras Shabbos K'Hilchasa (28:25) who applies this to a stopped watch. The same applies to hearing aids as well.

<sup>101</sup> Rama (266:12), due to the prohibition of carrying in such an area. [This point applies to Shabbos only.]

<sup>102</sup> Mishnah Berurah (266:37), noting that this is the most preferable resolution to this situation.

<sup>103</sup> Mishnah Berurah (266:36), invoking the leniency brought in Shulchan Aruch (266:11), see also Mishnah Berurah (num. 29) and Shemiras Shabbos K'Hilchasa (18:52 and n. 232-236).

<sup>104</sup> Mishnah Berurah (loc. cit., and ad. loc. 32), to avert a Biblical transgression.

<sup>105</sup> See Rama (308:3), Magen Avrohom (301:45), Shemiras Shabbos K'Hilchasa (22:34).

<sup>106</sup> Mishnah Berurah (279:14) states that one may have a non-Jew move all types of *muktzah* if it is *litzorech gufo* or *mikomo*. Removal of a non-functioning device from one's body would constitute *litzorech mikomo*.

When there is need to reactivate a hearing aid or an implant processor that was turned off (some processors automatically shut down when removed from the coil transmitter) or whose battery died, it is preferable whenever feasible to request of a non-Jew to turn it back on or to replace its battery even on Shabbos, and certainly on Yom Tov.<sup>107</sup> However, handling the non-functioning unit and the replacement battery in order to bring it to him, may be complicated by the restrictions of *muktzah* (i.e. regarding both the non-functioning unit and the replacement battery).<sup>108</sup> When feasible, it is preferable to circumvent this issue by requesting of the non-Jew to take them himself. When this is not practical, there is sufficient basis to permit handling both the non-functional device and the replacement batteries in order to facilitate its reactivation for use on Shabbos and Yom Tov.<sup>109</sup>

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<sup>107</sup> Applying the rule of *shvus d'shvus b'mokom tzaar* (Shulchan Aruch 307:5). See Tzitz Eliezer (6:6 par. 18) and Bais Avi (3:19) regarding Shabbos, and Minchas Yitzchok (2:112) - a least regarding Yom Tov. See also Rav Henkin in his second letter to Rav Shlomo Zalman (Minchas Shlomo 2:18:2), who seems to indicate that this may be permissible on Shabbos, according to some Poskim (regarding resetting a clock).

<sup>108</sup> A battery is generally considered *muktzah*, either *machmas gufo*, since it has no permissible use on Shabbos, or *machmas milachto l'issur*, since its normal usage involves a prohibited *melacha* (see Shalmei Yehuda on the Laws of Muktzah 2:25). If it's considered *muktzah machmas milachto l'issur*, it may certainly be handled in order to have a non-Jew reactivate the unit, under the rule of *l'tzorech gufo*. If it's classified as *muktzah machmas gufo*, this leniency would not apply. Nonetheless, even if batteries are generally *muktzah machmas gufo*, in the particular situation of a hearing aid user, who often needs battery replacement on Shabbos or Yom Tov, there may be valid Halachic grounds to consider them either *milachto l'issur*, or not *muktzah* at all. An analogy may be made to the Halacha regarding medications, which are generally considered *muktzah*, yet when a household member is ill and permitted to take them, they may be handled by others as well. Since they now serve a permissible purpose, they are no longer "useless" or *muktzah*. [Minchas Shabbos (84:16) first poses this question. Igros Moshe (Orach Chaim 5:21:1) states clearly that it is not *muktzah* at all, as does Rav Shlomo Zalman (in a short response published in The Halachos of Muktzah by Rabbi P. Bodner, num. 8) as well as in Shmiras Shabbos K'hilchasa (note to 33:4). Rav Elyashiv is quoted as concurring with this ruling (in Shalmei Yehuda 10:15).] Similarly, in the home of a hearing-aid wearer, the replacement batteries stand to serve a purpose that is permissible, albeit through a non-Jew, since he often needs to have the batteries replaced during Shabbos, and they may therefore not be considered *muktzah* at all. [Alternatively, this reasoning may provide Halachic basis to at least reclassify the batteries as merely *muktzah machmas milachto l'issur* rather than as *muktzah machmas gufo*, since they now do have a function, although it is prohibited (for a Jew). This reclassification would suffice to permit handling them in order to bring them to a non-Jew, as movement *litzorech gufo* is permitted with *muktzah machmas milachto l'issur*.]

<sup>109</sup> See Tzitz Eliezer (6:6:2,3) who finds two bases to permit moving a hearing aid, even had it been considered *muktzah*. First, to avoid any possible injury the deaf person might suffer when unable to hear sounds forewarning of danger. This may be comparable to the allowance found in the Rama (308:6) to move *muktzah* to prevent danger. Second, to maintain his dignity, by enabling him to respond appropriately when addressed, which may be included in the allowance to move *muktzah* for the sake of *kavod habrios*, human dignity, similar to using *muktzah* items to clean oneself, as found in Shulchan Aruch (312:1). The Tzitz Eliezer subsequently concludes that hearing aids are actually not *muktzah*, eliminating any need for these bases of allowance in normal use. In the case of non-functional units, though, these reasons may find their proper application. (See Rashi Kesubos 57a, immediately before the Mishnah.)

- In regard to replacing zinc-air batteries, some raise an issue re removing the tape covering the air holes, which allows it to function, as being a possible *issur* of *makkeh b'patish*. However, since these batteries were made

When enlisting a non-Jew is impractical, there may be valid Halachic grounds to permit a Jew to do the necessary reactivation in a backhanded motion (with a *shinui, kil'achar yad*), such as with the back of one's fingers. Assuming that this would involve a Rabbinic restriction at most, doing so in an unusual manner may be permitted in case of significant need, as well as to facilitate fulfillment of mitzvos, both of which reasons are often present with regard to enabling hearing on Shabbos and Yom Tov.<sup>110</sup>

END NOTES: <sup>111</sup> <sup>112</sup> <sup>113</sup>

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fully functional prior to being taped over, and are taped over only temporarily, merely to preserve them for later usage, removing the tape does not at all seem to resemble completing a utensil.

<sup>110</sup> See Mishnah Berurah in Biur Halacha (end of siman 349) who applies the rule of *shvus d'shvus l'tzorech mitzvah* to an act of a Jew himself. See also Shoneh Halachos ad loc.

<sup>111</sup> Be'er Heitev (Orach Chaim 326:8) references the Ginas V'radim (3:14) who writes, in regard to making soap-suds, that creating a temporary effect is not considered *molid*. The Maharsham (1:140), who initially considered making seltzer-water on Shabbos to be *molid*, rejected this opinion, citing the Chacham Tzvi (92), who proves that *molid* does not apply to effects on a person's body, from the Gemora Beitzah (33b and 23a) that it is permissible to handle spices which leave fragrance on one's hands, apparently maintaining that this restriction applies even to temporary effects. The Maharsham brought support for the Chacham Tzvi, and against the Ginas V'radim, from the Mishnah in Beitzah (33a) that prohibits igniting a flame on Yom Tov, even though the sparks would not last if not lit upon a combustible material. [In an addendum to the index of his *Teshuvos*, the Maharsham retracted his opinion re making seltzer-water in deference to other Rabbonim, who found basis for leniency in the ruling of the Taz (320:9) re adding salt to water on Shabbos, apparently considering the salty effect "created" insignificant and not included in this restriction. It is unclear exactly why this is not considered *molid*, particularly in light of a seemingly contrary ruling of the Taz himself (511, final paragraph) prohibiting adding fragrance to water on Shabbos and Yom Tov, or washing one's hands with scented waters, because of *molid*. Accordingly it is also unclear whether this retraction changes his position on non-lasting *molid* effects.] It is noteworthy though that a number of Achronim dispute the aforementioned opinion of the Taz (511), on the basis of the Gemorah Shabbos (50b) "*barda shari*", wherein it is permitted to wash one's face with scented waters, as cited by Ginas V'radim (3:16). See Yabia Omer (3:21:2 and addendum thereto, and 4:32:1) who compiles the various opinions on this matter, finding support for the opinion of numerous Poskim (including the Chasam Sofer and Rav Tzvi Pesach, Har Tzvi (1:189), among others) that a *molid* that does not last was never restricted. It may well be that all Poskim would agree that it is necessary for an effect to endure for some even short period of time, for it to be considered *molid*, and that an effect which does not endure for any duration of time at all would certainly be permissible. [See Rav Shvadron's notes to the edition of Teshuvos Maharsham on Orach Chaim published as part of the set of Da'as Torah (num.115), who writes similarly in defense of the Ginas V'radim, suggesting that the Chacham Tzvi would agree to this as well.] Hence, their discussions re suds, fragrances, flames and seltzer, all of which can last for a considerable amount of time, would not impact the momentary flash of the LED, which does not endure a moment after the speaking ends. [See above n. 7 re Rav Shlomo Zalman's opinion on this matter.] Accordingly, LED's reacting to speech may even be unanimously permissible, but certainly may be permitted according to many leading Poskim. Being that *molid* is a Rabbinic restriction, the Halacha may be determined in favor of the lenient view, especially in situations of great need (see above, n. 13). [This is addition to the fact that lighting the LED is unintended, itself basis for leniency (see n. 34).]

<sup>112</sup> Rav Shlomo Zalman (in his Ma'amar reprinted in Minchas Shlomo 1:9 n. 3, and in Shmiras Shabbos K'Hilchasa 1:34 n. 108) initially seems to have considered this approach as "possibly reliable" (terming it merely *ephshar*), but concluded to rule accordingly (see Minchas Shlomo 2:18:1 *d"h V'gam lo*, and Letter of Approbation to Lev Avraham, wherein it is clearly his conclusion). The other opinions cited above (note 2) do not offer this basis of leniency, fundamental as it is, *u'makom henichu lo l'hisgader bo*. See also Sh'arim Hamitzuyanim B'Halacha (chap. 80 n. 81) who also considers this approach.

Comparisons are drawn by other Poskim to various Halachic sources to provide bases upon which to permit wearing hearing aids in public areas. These sources include the concept of the lame man's cane (Shulchan Aruch 301:17) which is considered to be the equivalent of being his "shoe", and may be applicable to both eyeglasses and hearing

aids according to some opinions; the spice placed in one's mouth to dispel an unpleasant smell (see above n. 77), to which hearing aids may be comparable in as much as they spare their wearer from an undesirable condition; items worn for medicinal and/or curative purposes (see above n. 79-80), which may have relevance to hearing aids due to the protection they provide from potential hazards; and a prisoner's shackles (Shulchan Aruch 301:19) in which he is permitted to walk outside, due to their protective functionality (as explained by the Me'eiri in Shabbos chap. 6 *Mishnah Shvi'is d''h kisei*), albeit against his will. See Minchas Yitzchak (1:37) and Be'er Moshe (1:17:6). See also Rabbi Sandler in *The Journal of Halacha and Contemporary Society* (Pesach 5761, p. 91-97) for a fine presentation of these various sources.

When taken individually, each of these sources raises its own Halachic issues, with varying opinions amongst the Poskim which complicate their application to the case of the hearing aid (as dealt with in the cited responsa). Additionally, the comparison between any one of these cases and the hearing aid is arguably weak, being that its primary function is neither curative nor protective, as are the cases cited. However, when viewed collectively (as a *tz'ad hashaveh*), the governing principle common to all these leniencies is the rule of the *tachshit* as presented above, i.e. that the functionality of an item and the benefit that the wearer derives from it render it halachically similar to clothing being worn rather than to a load being carried. Ultimately, this is the basis of all these leniencies, and in the end this rule seems to best provide the basis to permit wearing hearing aids in public areas on Shabbos as well.

Rav Shlomo Zalman adds, in his *Miluim to Shmiras Shabbos K'Hilchasa* (34:108), that the fact that hearing aid wearers tend to conceal the unit as much as possible does not detract from its *tachshit* status. This is also evident from the case of the spice concealed in one's mouth to improve its odor (see above n. 77), as well as from the Mishnah Berurah (303:53) and Bi'ur Halacha (ad. Loc. *d''h v'yotzah b'etzadah*). See also Shmiras Shabbos K'Hilchasa (1:18:10 and n. 52).

<sup>113</sup> Mishnah Berurah (308:2) states that the stringent status of *muktzah machmas chisaron kis* applies to such items regarding which, out of concern for their safety, one is insistent that they not be moved about, and disassociates himself (*mikatzeh da'ato*) from them. Tosfos Shabbos (308:2) similarly defines *muktzah machmas chisaron kis* to mean such items that, out of concern for them, one sets aside a place for them from which they are not to be moved throughout the Shabbos. Igros Moshe (Orach Chaim 5:22:12) writes that while being set aside in a pre-designated place (being *m'yacheid makom*), as stated in Gemora Shabbos (123a), is not an absolute prerequisite for *muktzah machmas chisaron kis*, it does serve as an indicator that the owner is indeed *makpid*, i.e. insistent on not handling the object. In fact, Rambam (Hil. Shabbos 25:9) twice emphasizes that this element of the owner being *makpid* is essential to the definition of *muktzah machmas chisaron kis*. See also Bais Yosef (308:1 *d''h kol hakeilim*) who infers from these words of the Rambam the converse rule, that when one is not *makpid* on it, even an item that would otherwise meet the criterion of *chisaron kis* (i.e. merchandise or precious utensils) would not be *muktzah*. Accordingly, hearing devices cannot be classified as *muktzah machmas chisaron kis* despite their value and delicate nature, since their owner clearly intends to use and to handle them throughout Shabbos, and definitely does not disassociate himself from them, is not *m'yacheid makom* for them, and is not *makpid* against handling them. [Cf. Shevus Yaakov (3:26) who suggested that all wristwatches should be *muktzah machmas chisaron kis*, presumably due to their value and frailty, but the consensus of later Poskim rejected this opinion, as referenced in the Shaarei Tshuva (Orach Chaim 308:5), Minchas Shabbos (80:242) and Yechaveh Da'as (2:49).]

Additionally, according to the opinions that *muktzah machmas chisaron kis* is predicated on an item also being *milachto l'issur* [See Shulchan Aruch Harav (308:4), Tosfos Shabbos (310:130, T'hilah l'Dovid (introduction to 308) and Shmiras Shabbos K'Hilchasa (1:20 n. 48)], the classification of *muktzah machmas chisaron kis* would not be applicable to hearing devices, inasmuch as they are primarily *milachto l'heter* (see above n. 92).

Tzitz Eliezer (6:6 par. 4) poses an additional question, whether hearing aids (or other battery-operated devices) should be deemed *muktzah* due to the rule of *bosis l'davar ha'asur*, similar to a candlestick which is *muktzah* because of the flame it supports. He resolves this issue on the basis of the aid being constantly used and handled, in contrast to the candlestick which remains stationary during its use. More fundamentally, though, the concept of a *bosis l'davar ha'asur* applies only when the *davar ha'asur* is of primary importance (e.g. the flame), and the purpose of that which supports it (e.g. the candlestick) is to serve it. (See Mishnah Berurah 311:29 and 259:9) By contrast, the purpose of the battery is to serve the device, rather than the reverse, and the device should therefore certainly not be considered a *bosis* to the battery. [See Shmiras Shabbos K'Hilchasa (1:28 n. 55) who applies this very reasoning to battery operated watches.] See Yechaveh Da'as (2:49) who also concludes that a hearing aid is not a *bosis l'davar ha'asur*.

## ***TORAS HACHERESH – Part II***

### ***Fulfillment of Torah Obligations for the Contemporary Jewish Deaf and Hard of Hearing***

#### ***Introduction: Challenging Mitzvos for the Jewish Deaf***

In our daily lives we encounter many *mitzvos* (Torah Commandments) that are fulfilled through the use of speech and/or hearing. Amongst them are our daily prayers, reciting the portions of Sh'ma each morning and evening, blessings said before and after eating and upon doing most *mitzvos*, and Sabbath Kiddush and Havdala, as well as reading the Megilla on Purim, the Haggada on Passover and listening to Shofar blowing on Rosh HaShana.

These *mitzvos* present special challenges to the hard-of-hearing, for these individuals often cannot fulfill their obligations by listening to another person's recitation, as is commonly done. In the coming chapters, we will attempt to present Halachic responses to each of these situations, addressing the needs of individuals with various levels of hearing and/or speech abilities, *b'ezras HaShem*.

However, before entering into those discussions, we must first address an even more fundamental issue – to establish if and when such individuals are obligated in the fulfillment of *mitzvos* at all. Only once this question is properly resolved can we return to deal with the specifics of how hard-of-hearing individuals can fulfill these obligations.

The issue at hand is the Halachic principle that a person who can neither hear nor speak is exempted from *all* Torah obligations, while one who has *either one* of these faculties is fully obligated in all the Commandments. This means that those hard-of-hearing individuals who can speak are included in the obligations even if they cannot hear, and likewise, those who can hear are included even if they cannot speak. However, those who can neither speak nor hear speech are not obligated in the *mitzvos* (sources and explanation to follow in Chapter 1).

## TORAS HACHERESH II

We will need to clarify how these classic rules apply to the contemporary Jewish Deaf, in light of the advantages in communication and technology that they enjoy over previous generations. These advantages have significantly changed their situation and life-styles and may conceivably affect and potentially upgrade their Halachic status as well.

The questions arising from these developments are numerous, and are extremely relevant to many hard-of-hearing people. They affect both those born with deficits in their communicative abilities, as well as those who may have lost such faculties later in life.

These questions include:

- What levels of speech and/or of hearing abilities are necessary in order to be considered Halachically as possessing either of these faculties?
- Do hearing and speech achieved through modern technologies constitute valid hearing and speech to satisfy Halachic criteria?
- Does the ability to communicate proficiently through manual sign language compensate Halachically for the inability to do so orally?

The answers to these questions fundamentally define the Halachic status of a wide range of the contemporary deaf and hard-of-hearing Jewish population. As noted above, we will focus on these issues first and then return to address those relating to the various means through which they may fulfill *mitzva* obligations, *b'ezeras HaShem*.

## Chapter One

### *Halachic Status of the Contemporary Jewish Deaf*

#### *Understanding Halachic Daas*

Torah obligations – *mitzvos* – are incumbent upon Jewish men and women as of their *bar* or *bas-mitzva*, respectively. As of this age and on they are considered to possess the requisite level of *daas*, the maturity of understanding that enables them to become responsible for their actions. Children below the age of *bar* or *bas-mitzva*, on the other hand, are exempt from such obligations, because they lack the requisite level of *daas*.<sup>1</sup>

Clearly, *daas* does not mean cognitive intelligence, for children can unquestionably be quite intelligent. Often, they can even surpass their seniors as computer whizzes or chess champions and exhibit impressive abilities in academics and creative thinking. Rather, *daas* refers to an understanding of consequences and a sense of responsibility, the presence of mind to weigh the positive and negative effects that may result from one's actions.<sup>2</sup> As a young person grows up, the impulsivity of youth is gradually replaced by the maturity developed through years of life experiences from which he learns the long term effects of choices that he makes. He learns to take these considerations into account when making decisions, and eventually becomes of age to take responsibility for his actions. At that point, the child has matured into a *bar-daas*, a responsible young man or woman.<sup>3</sup>

<sup>1</sup> כדתנן באבות (פ"ה מכ"א) בן י"ג למצות, וע"י בתש"ו הרא"ש (כלל ט"ז סי' א') ששיעור זה הלכה למשה מסיני ככל שיעורי התורה (כדאי' ביומא פ. וסוכה ה:), ואמנם טעמא מבואר בכל הש"ס משום דלא הוי בן דעת (וע"י להלן הע' 6 כמה מקורות לכך לענין חרש שוטה וקטן), והכי נמי תנן במתני' ריש ערכין שאין נודרים וכו' מפני שאין בהם דעת, ובמשנה ב"מ (פ"ז מ"ו) תנן שאין בקטנים דעת לענין קנינים, ובמס' טהרות (פ"ג מ"ו) הוה דין הקטן לשאין בו דעת לישאל.

<sup>2</sup> וכן הוא ענין מה שאמרו בגיטין (סד:): בסימני הדעת, חפץ ומחזירו לאחר שעה, דהיינו הוראת אחריות. וזהו גם טעמא דסימני שטות המנויין בחגיגה (ג:): שיתכן שימצאו אף בבעל מוח מחודד אלא שחסר לו דעת להתנהג באחריות רגילה (נורמלי), וכעין מה שכתב הרמב"ם (הל' עדות פ"ט ה"ט) ששוטה בדבר מן הדברים פטור מהמצות אע"פ שמתנהג כשורה בשאר הדברים ע"ש, וכן מבואר מהסימן העיקרי של שטות - שמאבד כל מה שנותנים לו, וכדמסיק בחגיגה (ד:), דהיינו חסרון אחריות בהחלט. וכן משמע ממה שכתב הרמב"ם (הל' מלוה פכ"ו הי"א) קטן שערב את אחרים הורו הגאונים שאינו חייב לשלם כלום אף כשיגדיל שאין לקטן דעת כדי לשעבד עצמו בדבר שאינו חייב בו ולא בערבנות ולא בכל כיוצא בזה, ודין אמת הוא וכן ראוי לדון, עכ"ל.

<sup>3</sup> ויתכן שזוהי כוונת הרמב"ם (הל' חגיגה פ"ב הי"ד) שכתב "חרש שוטה וקטן מפני שאין בני חוב הרי הן פטורים מכל המצוות האמורות בתורה" עכ"ל, וצריך ביאור לכאן איך נתן טעם למה שפטורים מהמצוות בזה שאינם חייבים, הלא אילו לא היו פטורים הרי היו חייבים. אלא נראה שרצה לומר שבטבעם אינם בני חוב ואחריות כלל, ושטעם זה פטרתם רחמנא מכל חיובי המצוות. ולפי זה מבואר שדין גדלות ומעלת בר-דעת להתחייב במצות תלויין ביכולתו להתחייב ולהיות אחראי על התחייבותו.

[This base line of *daas* is, of course, just the minimum necessary for Torah obligations to apply. As a person grows, his *daas* grows with him, and with it, he develops an increasingly wise perspective on life and its issues [”ישׁוב הדעת”]. The highest level of *daas* is דעת תורה, that wisdom which can only be derived from total emersion in Torah study and culled from the breadth and depth of its divine wisdom. Regarding such *daas* we are taught that as Torah Sages age, דעתן מתישבת עליהן, their *daas* becomes ever more settled and well thought out (see end of *Tractate Kinnim*). Even as their other faculties wane, the wisdom of their life-long *daas* waxes ever stronger, shedding clearer light and understanding upon life’s questions and issues. Thus, although their *intellect* may no longer be as sharp as it was in their youth, the sages’ “*daas*” increases with their seniority, enabling them to offer sage advice and render weighty decisions based upon their ever keener insights into the eternal truths of Torah wisdom and its all inclusive application to real-life situations.<sup>4</sup>]

### **The Classic Classification of a Cheresh**

Just as pre-*bar* or *bas-mitzva* children are exempt from Torah obligations because they are not considered *bonei-daas*, so too is a *cheresh*, one who can neither hear nor speak, classically exempted from such obligations.<sup>5</sup> This Halachic status applies regardless of the level of functionality of an individual *cheresh*, i.e., even if he is able to conduct himself ostensibly in a fully normal manner.<sup>6</sup> [The applicability of this classic classification of a *cheresh* to the contemporary Jewish Deaf will be addressed below.]

<sup>4</sup> על המשנה באבות (פ”ג מ”ז) אם אין בינה אין דעת אם אין דעת אין בינה, ביארו הראשונים שחכמה היינו הידועות שלומד מרבו, בינה היינו הכח לדמות וללמוד גם דברים אחרים מתוך מדע חכמתו, ודעת היינו שלימות ידיעת הענין בטעמו (ע”ש בביאורי רש”י והרע”ב וה”ר יונה). וכ”כ בביאור הגר”א ז”ל במשלי (בי ב-ג, גי י”ב, י”ד י”ז), וע”ע ביאורו לאסתר (ד’ ה’) ע”ד הפשט. ומובן מאליו, על פי ביאור המילים הנ”ל, שיתכן מאד שילד קטן יתחכם בידיעות מרובות ויזכרם בגירסא דינקותא כדיו כתובה על נייר חדש (כמו שאמרו באבות פ”ד מ”כ), וכן יתכן שיהא מסוגל להבין ולחדש דברים נכוחים הן בקודש והן להבדיל בחול, ועם כל זה לכלל דעת לא הגיע בשחר ימיו ושנותיו הפעוטות, וכענין שאמרו (נדרים מ.) בנין ילדים סתירה - לא מחוסר חכמה ולא מחוסר בינה, אלא מחוסר דעת. ולכן דייקו חז”ל בלשונם בקבעם דקטן לאו בר “דעת” הוא, דוקא.

<sup>5</sup> וכדתנן (סופ”ג דר”ה) חרש שוטה וקטן אין מוציאין את הרבים ידי חובתן, זה הכלל כל שאינו מחויב בדבר אינו מוציא את הרבים ידי חובתן. וברמב”ם (הל’ עדות פ”ט ה”א) החרש שוטה שאין דעתו נכונה ואינו בן מצות, וכ”כ בהל’ חגיגה (פ”ב ה”ד, מובא לעיל הע” 3), והכי נמי אמרי’ בהרבה מקומות שחרש שוטה וקטן אינן בני דעת, ע”י חגיגה (ב:). ושם מצויין לשאר דוכתי. וע”י בפרי מגדים (בפתיחה כוללת ח”ב אות א’) שאינו חייב במצות אפילו מדרבנן, ובמקום אחר (מש”ז לאו”ח סי’ רס”ו סק”ד) דן הפרמ”ג אם חייב אביו בחינוכו, ע”ש.

<sup>6</sup> כסף משנה (הל’ גירושין שם) וז”ל חרש גמור אע”פ שעושה מעשה פקח, כשוטה חשבינן ליה, עכ”ל. וכ”כ הריטב”א (בחידושים מכת”י, הוצ’ מוהר”ק, לגיטין עא.) וז”ל דכיון דאינו שומע ואינו מדבר לא סגיא דלא משבשא דעתיה ולא מהניא ביה בדיקה, עכ”ל, ע”ש. וכן פסק בשו”ת צמח צדק (הקדמון, סי’ ע”ז) שכי דאין לחלק בין החרשים, ואפילו הוא פיקח ביותר והרבה מכירים ברמיזותיו, מ”מ חרש מיקרי (וע”י להלן הערה 16), וכ”כ הפרמ”ג (בפתיחה כוללת ח”ב אות ג’) דא”כ נתת דברך לשיעורים, וע”י עוד גמ’ גיטין (עא:). דהוי בכלל חרש אע”ג דחזינא ליה דחריף, ע”ש.

This classification of a *cheresh* is, however, specifically limited to one who can neither hear – aurally, nor speak – orally.<sup>7</sup> Anyone who can hear and understand speech is considered a full *bar-daas* - even if he cannot speak intelligibly. Similarly, anyone who can speak and make himself understood to those with whom he speaks is considered a full *bar-daas* - even if he cannot hear enough to understand what others say to him.<sup>8</sup>

### **Speech and Hearing Criteria Regarding Daas**

As stated above, anyone who can speak is included in *mitzva* obligations regardless of their level of hearing. In this context, speech is defined as the ability to give over a message (e.g., a thought, request or information) through verbal expression. So long as the speaker's basic message can be understood by the average listener (i.e., an untrained listener who is not particularly familiar with this individual's manner of speech) - even if his speech-articulation is imperfect to the extent that not all of his words are readily understood - he is deemed as being capable of speaking and is hence considered a *bar-daas*.<sup>9</sup> This rule applies regardless of whether this individual learned to speak naturally (e.g., in the case of a post-lingual hearing loss) or through various methodologies (including finger-spelling and/or sign language) and technologies (including the use of electronic hearing devices).<sup>10</sup>

Similarly, a person who can make out the basic message that he hears (i.e., providing that he comprehends the verbal speech itself, without relying on lip-reading) is

<sup>7</sup> כדתנן במס' תרומות (פ"א מ"ב) **חָרֵשׁ שְׁדַבְרוּ בוּ חֻמְסִים בְּכָל מְקוֹם שֶׁאֵינוֹ שׁוֹמֵעַ וְאֵינוֹ מְדַבֵּר**, ובגמ' חגיגה (ב:) פירשו הא מדבר ואינו שומע [אין שומע ואינו מדבר חייב, והביאו מתוספתא דתניא זה וזה הרי הן בפקחין לכל דבריהם, ע"ש בסוגיא. וכן נפסק ברמב"ם (פ"ב מהל' אישות הכ"ו, ופ"ב מהל' גירושין ה"ט"ז) ובטור וש"ע (או"ח סי' נ"ה סעי' ח', ויו"ד סי' א' סעי' ה', ואב"ע סי' קכ"א סעי' ו').

<sup>8</sup> כדאי במשנה תרומות ובגמ' חגיגה ובשו"ע (כדמצויין לעיל, הע' 7). ועי' בנתיבות (חו"מ סי' רל"ה סק"כ) שהוכיח כן מגמ' חגיגה הנ"ל ומתשובת הרא"ש (כלל פ"ה סי' י"ג) המובא בטור חו"מ שם שכי' כל מקום שהזכירו חרש אצל שוטה היינו שאינו מדבר ואינו שומע כלל עכ"ל, ודלא כדמשמע מהב"י שם (סוף סק"י"ט) ובכס"מ (הל' מכירה פ"ט ה"ב) וכן מהסמ"ע שם (סי"ק מ"ו). וכן נראה מבני הגר"א ז"ל שם (סי"ק נ"ד) כמו שכי' הנתיבות, וע"ע באבן האזל (שם בהל' מכירה) שביאר בשיטת הרמב"ם (שהוא מקור לשון הטוש"ע בחו"מ שם) שבכל הלכה התלויה בדעת הוי דין המדבר ואינו שומע כדין הפיקח, ומשאי"כ בהלכות התלויות בענינים אחרים [וכ"ז דלא כמו שכי' בשו"ת משפטי עוזיאל (חאב"ע סי' פ"ט אות ב')] להשיב ע"ד הנתיבות הנ"ל, ע"ש]. ובפרמ"ג הנ"ל הביא דברי הבי"ה הנ"ל וכי' עליו שבאמת **כל הפוסקים כתבו דאף מדבר ואין שומע כלל הוה כפיקח** וכדתניא בריש חגיגה. וגם בשו"ת אגרות משה (אב"ע ח"ג סי' ל"ג) כי שדברי הנתיבות מוכרחים ואין לחוש לדי' הכס"מ והב"י, ע"ש.

<sup>9</sup> שו"ת מנחת שלמה (ח"א סי' ל"ד), ושם בשם הגר"ש אלישיב ז"ל, וכ"כ הגר"ש"א בקובץ תשובות שלו (ח"א סי' י'), ומביא שם שכבר פסק כן להדיא בשו"ת בית שלמה (או"ח ח"ב סי' צ"ה) ע"ש, וכן פסק גם בתשו' צ"ח אליעזר (חט"ו סי' מ"ו אות ג').

<sup>10</sup> כ"כ הגר"ש אלישיב ז"ל בקובץ תשובות הנ"ל, והביא כן משו"ת בית שלמה (שם סי' צ"ב) ומשו"ת דברי חיים (אב"ע סי' ע"ב) ומשו"ת מהר"ש"ם (ח"ב סי' ק"מ), ודלא כתשו' מהר"מ ש"י"ק (אבה"ע סי' ע"ט) שכי' דאין דיבורם דיבור, וע"ש מה שכתב הגר"ש"א בדחיית דבריו, וכ"כ הגר"ש אונטרמן ז"ל בשו"ת היכל יצחק (חאבה"ע"ז ח"ב סי' פ"ב) לדחות דברי המהר"ם ש"י"ק הנ"ל, וכ"כ בתשו' אגרות משה הנ"ל שנחשב כ"מדבר" גם כשלמד לדבר רק באמצעות מכשירי שמיעה, ואף שלדעתו אין דין "שומע" אלא כששומע בשמיעה טבעית, מכל מקום הרי למד לדבר ודיבורו הוי שפיר דיבור, ולכן דינו כמדבר ואינו שומע שהוא כפיקח גמור לכל דבריו, ע"ש.

considered to be a hearing person and therefore a *baal-daas*, even if he hears with some degree of difficulty and does not understand every word that he hears.<sup>11</sup> This is certainly so if he can hear to this degree through his natural ears, even though he may wear hearing aids in order to enhance and improve his hearing. However, hearing solely through the use of hearing aids – for someone who cannot hear and comprehend speech with his unaided ears – may not suffice to classify him as a hearing person.<sup>12</sup> His status may therefore depend on his ability to speak intelligibly, which itself would suffice to classify him as a *bar-daas*, as explained above.

### **Exploring the Underlying Principles of “Cheresh” Status**

#### **And Its Application to the Contemporary Jewish Deaf**

As explained above, hard-of-hearing individuals who can speak are definitely included in *mitzva* obligations - even if they cannot hear, and likewise, those who can hear are also included with certainty – even if they cannot speak. However, those who can neither speak nor hear speech effectively would not be obligated, according to these classic criteria, in the performance of *mitzvos*.

Nonetheless, there may be viable Halachic grounds to include the contemporary Jewish deaf into *mitzva* obligations, even those who can neither speak nor hear speech. The possibility of this change of status is based upon the significant advances made in recent generations, both in the development of meaningful means of communication through sign language, and through major technological advances in electronic hearing devices.

<sup>11</sup> ע"פ הנ"ל, הע' 9; וע"ע שו"ת אבני נזר (חח"מ ס"י ק"י) דהיינו דוקא כשיכול להבין דיבורי בני אדם ששומע, ולא מספיק אם יכול רק לשמוע קולות גדולות שאינם של דיבור, ע"ש.

<sup>12</sup> לשיטת האגרות משה המובא לעיל, צריכים שמיעה טבעית לדין שומע הקובע לענין הפקחות, ולא מהניא שמיעה התלויה במכשיר עלעקטרוני ע"ש. ואולם בשו"ת תשובות והנהגות (ח"א ס"י ק"א) להגרי"מ שטערנבאך שליט"א כ' דחשיב שפיר בגדר שומע גם כששומע רק ע"י מכשירי שמיעה, וכ"כ הגרי"ע יוסף ז"ל בשו"ת יביע אומר (ח"ז אב"ע ס"י י"ח אות ב').

[נראיתי מי שהקשה על זה ממה שכתב ביביע אומר עצמו (ח"א ס"י י"ט אות י"ח) שאין יוצאים ידי חובתם בשמיעה באמצעות רם-קול או מכשיר שמיעה משום שהקול ששומעים אינו נחשב כקול המדבר. ולע"ז אין בזה שום סתירה, דאף שסובר שקול זה אינו נחשב כקולו של המדבר, מ"מ לגבי השומע הרי הוא שומעו, ולכן סובר שפיר שיש להחשיבו כשומע גמור לכל דבריו.]

וכן הוא גם לאידך גיסא, שהרי האגרת משה סובר שכן יש לצאת ידי חובת המצוות באמצעות מכשירים אלה (כמו ש' באג"מ או"ח ח"ב ס"י ק"ח וח"ד ס"י צ"א, וראה להלן פ"ב ובהע' 7 שם), ואעפ"כ סובר שאין שמיעה כזו מועלת להחשיבו כשומע לעניני דעת וחיוב במצוות, וראיתי מי שנתקשה גם בזה, ובאמת לק"מ, ששני נושאים נפרדים הם, הא' בדין חרש השומע רק ע"י מכשירי שמיעה אם נחשב ע"י כ"שומע" שדינו כבן דעת להתחייב במצוות או אם עדיין דינו כחרש, וזה תלוי בבירור שורש ליקוי דעת החרש ואם ניתן להיתקן ע"י מכשירים מלאכותיים, ונושא הב' בדין האפשרות לקיים מצוות המדוברות ע"י שמיעת הדיבורים באמצעות מכשירים עלעקרוניים, ודיון זה תלוי בקביעות איכות הקול, אם יש להחשיב קול הנשמע באמצעותם כהמשך מקול המקורי או כקול מחודש המנותק מקול הראשון, ואין ב' נושאים אלו תלויים זה בזה כלל.]

The historic Halachic precedent for this consideration was set by the *Kesav Sofer* (Rav Shmuel Binyamin Sofer, successor to his father Rav Moshe Sofer – world-renowned as the *Chasam Sofer* – as Rav of Pressburg and leader of nineteenth century Austro-Hungarian Jewry) in the 1860's. Upon visiting a school for the deaf located in Vienna, Austria that pioneered in the development of sign language, the *Kesav Sofer* observed the level of communicative abilities exhibited by the students. He was so impressed by their achievements and abilities that he requested of the headmaster to purchase *Tefillin* for each of the Jewish boys who were enrolled in the school.<sup>13</sup>

Thus, the *Kesav Sofer*, a major Halachic authority in his own right, entertained the possibility of a deaf-mute rising above the classic Halachic status of a *cheresh* through learning to communicate via alternative methods such as lip reading and signing. This inherently means that the “*cheresh*” status is not absolutely ‘set in stone’ for all deaf-mutes, and that they are not all necessarily exempt from *mitzva* obligations.

With this ruling, a fundamentally novel approach to understanding the very basis of the Halachic status of a *cheresh* was introduced. This new approach indeed became the pivotal point of contention throughout the course of the following century's Halachic literature dealing with issues relating to the Jewish Deaf. Many leading Halachic opinions concurred with that of the *Kesav Sofer*,<sup>14</sup> while many dissenting opinions were put on record as well.<sup>15</sup>

<sup>13</sup> מובא ע"י בנו בשו"ת שבט סופר (אבה"ע ס"י כ"א) שהכתב סופר היה משתומם ממה שלמדו אלו החרשים עד שעלה ספק בלבו אם אינם בר דעת גמור, ע"ש. ומובא גם בשו"ת מוה"ר יהונתן שטייף (סוסי" רל"ט) ובשו"ת יחיה דעת (ח"יב ס"י ו').

<sup>14</sup> כן סוברים שו"ת דברי חיים (ח"יב אבה"ע"ז ס"י עב) שקדושו מן התורה, ושו"ת מהרש"ם (ח"יב ס"י ק"מ) שמצטרף למנין, ושו"ת בית שלמה (או"ח ס"י צה) שחייב במצוות, וכ"כ העזרת נשים (עזרה י"ב שער ג'), ושו"ת מהרא"ש (ס"י יד), ושו"ת מנחת שלמה (ס"י לד), ושו"ת מנחת יצחק (ח"יג ס"י מ"א), וע"י לקט הקמח החדש (ס"י נ"ה) שכן דעת עוד אחרונים, וע"ע מש"כ הגר"ע יוסף ז"ל ביחיה דעת (ח"יב ס"י ו'). ובאגרות משה (אבי"ע ח"יג ס"י ל"ג) כ"י מסברא שהחרשות סימן לליקוי במוח אלא שניתן לתקן ע"י הלימוד לדבר, ומציאות זו צ"ב, וגם לא משמע הכי לכאן מהרמב"ם בפי המשניות ריש מסי' תרומות שכי' שהחרשות היא סיבת האלמות ולא כי שליקוי המוח היא סיבת שתיהם. וע"ע מאמרו של הגי"ר יחיאל יעקב ווינברג ז"ל (נדפס בקובץ שנה בשנה תשכ"ה עמ' קכ"ה) שעמד ג"כ בסברא זו והעיר מדברי (הר"ש) (הר"מ) במסי' תרומות הנ"ל דמשמע שהחסרון של החרש בא מפני שאין לו ממי ללמוד, ע"ש [ומשא"כ בחרשי זמננו וכנ"ל]. וע"ע ירחון מוריה (אלול תשמ"ב עמ' ס"ה) מהגרש"ז אוירבאך ז"ל.

<sup>15</sup> כן דעת מהר"ם שיק בשו"ת שלו (אבה"ע"ז ס"י ע"ט) ושער הזקנים לר"י המבורג (ח"יב עמ' קל"ה ג'), ושו"ת זכר שמחה (ס"י ט"ו) וע"ע בעמ' 9 שטען שגם קטן מסוגל להראות פיקחות גדולה ואעפ"כ אינו נחשב בר דעת לדינא, וה"ה לחרש, אמנם לע"ד טענה זו מיוסדת על ההנחה שיש סיבה עצמאית לחסרון דעת החרש שלא ניתן ליתקן, וכמו שאין הקטנות מסתלקת ע"י כשרונות מצויינות, משא"כ אם חסרון דעת החרש אינו אלא מסיבת ניתוק מחברת בני אדם ומניעתו ממשא ומתן נורמלי עמהם, שא"כ יתכן שכן ניתן ליתקן ע"י התפתחות אמצעי ההתקשרות עם חברה רחבה בעולם, ובשו"ת משפטי עוזיאל (ח"יב ס"י פ"ט) כי דלא מהני לימוד לדבר בלשון עגלים, והביא סמוכים מלשון הרמב"ם (פ"ב מהל' גירושין הי"ז) שכי' אין סומכין על רמיות החרש ולא על כתבו אע"פ שדעתו נכונה ומיושנת עליו, עכ"ל. ושו"ת ר' אליהו גוטמכר (או"ח ס"י י"ד) ושו"ת צור יעקב (סו"ס ט"ז), ע"ש שסובר כמהר"ם שיק ודלא כהבית שלמה, אבל לא ביאר דבריו ושו"ת הלכה למשה (ס"י רס"ב), והעיר ממה שהקשה בתוס' רעק"א פ"א מ"ב דתרומות על פיהמ"ש הרמב"ם (שם) ושו"ת דבר יהושע (ח"יג אבה"ע"ז ס"י לו). ובשו"ת היכל יצחק אבה"ע"ז ח"יב ס"י פב כי שלמרות שלמד בב"ס נשאר דינו כבראשונה, דלא פלוג. [ויש שתפסו כן בדי' הצמח צדק והפרמ"ג (מו' לעיל בהע" 6), אבל לע"ד אין זה מוכח, דלכו"ע אין חרש פרטי יוצא מהכלל ליחשב בר דעת ע"י הנהגה כפקח, ומשא"כ כשנתחדש אופני שיחה קלה בין חלק רחב מהחרשים שבעולם לבין סתם בני אדם. גם מה שכי' בשו"ת נאות דשא (ח"א ס"י קל"ב) אינו שייך לנדונו, דהמעין בשאלתו יראה דלא מיירי בכה"ג כלל].

ובסי' מלאכת חרש בקונטרס קצר שבסוף הספר ששאל שאלה זו את גדולי הדור כהג"ר מאיר שמחה הכהן והג"ר ראובן דאנציגער והג"ר אלכסנדר לפידות ז"ל ונחלקו אם דינם כפיקח או חרש או ספק, וחבל שלא הביא שם דבריהם בתשובותיהם אליו. וע"י פסקי דין רבניים כרך ז עמ' 48 אות ה שחרש שלמדוהו לקרוא ולהבין כל דבר על בוריו דעת רוב הפוסקים שדינו ככל חרש דלא פלוג, וע"י בכרך י' עמ' 802 עפ"י המלאכת חרש שאם למד לדבר כאחד האדם דינו כפיקח.

At the core of this Halachic debate is to establish the fundamental reason that a *cheresh* is not considered to be a *bar-daas* and is accordingly exempted from Torah obligations. If this status is rooted in a Halachic principle that is derived from Torah Scripture, or if it was transmitted as part of the Oral Law received from Sinai (*Halacha L'Moshe MiSinai*), then it is eternal and unalterable like all of Torah Law. The Halacha would then presumably apply equally to the Jewish Deaf of all generations, regardless of any changes and developments in their communicative-abilities and the technologies they may employ.<sup>16</sup>

However, if the Halachic status of a *cheresh* is based upon the deaf-mutes' inability to communicate with other people, a disability which the Sages found to so preclude them from fully developing rational thinking and normative behaviors that they could not reliably function as *bonei-daas*, then this status would actually be a function of and dependant upon that inability. This premise would allow for the possibility of deaf-mutes rising above the status of a *cheresh*, should they become enabled to overcome the innate debilitating effect of deafness, namely, the inability to communicate effectively with others.<sup>17</sup>

Alternatively, it is arguably possible that even if this status is derived from Scripture and/or a *Halacha L'Moshe MiSinai*, the definition of a *cheresh* to whom it applies might be limited specifically to a deaf-mute who is incapable of effective and meaningful communication, and would *not* apply to many of the contemporary deaf who are now able to communicate freely and fully through methodologies that are currently in use on an unprecedentedly widespread scale.<sup>18</sup>

<sup>16</sup> כ"כ בשו"ת דברי מלכיאל (ח"ו סי' ל"ה) מן הסברא, שנתקבל הלכה למשה מסיני שחרש אין בו דעת ופטור מן התורה מכל המצות. וע"ע בדברי מלכיאל (ח"א סי' ע"ח) שהביא ד' הצמח צדק (מ"ו לעיל הע' 6) שכי' דאין לחלק בין החרשים, והוסיף לבאר וז"ל שלא מסרה לו תורה דיני קנינים (וה"ה למצוות). [וראה להלן הע' 18].

<sup>17</sup> כן כ' הגרש"ז אויערבך ז"ל בשו"ת מנחת שלמה (ח"א סי' ל"ד) שאין דין זה נלמד משום ילפותא מקראי או הלכה [למשה מסיני], רק שידעו חז"ל ברוב חכמתם שאיש כזה אי אפשר לראותו כאחראי על מעשיו, ע"ש שהסיק שמטעם זה היו נחשבים באמת כשוטים לפני שידעו ללמדם ולפתח שכלם כמו שידועים בזמננו, ומשא"כ בזמננו, ע"ש. ובאמת כן נראה להדיא מרש"י (חגיגה ב:): וז"ל הכי קים להו לרבנן דמי שאינו שומע ואינו מדבר דלאו בני דיעה ניהו עכ"ל, הרי שלא כ' שזו הלכה למשה מסיני אלא שכך שיערו חכמים, וא"כ אינו גזרת הכתוב בכל אופן ויש באמת מקום לומר דתלוי בשיקול הדעת וניתן להשתנות בשינוי מציאות ההתקשרות וההתפתחות.

<sup>18</sup> כן משמע לכאן דעת החתם סופר בתשובותיו (אבי"ע ח"ב סי' ב') שכי' דקרוב לודאי שכך היא הלכה למשה מסיני בכל מקום דחרש ושוטה וקטן פטורים מן המצות עכ"ל, הרי שסובר שהלכה קבועה היא, ואעפ"כ כ' שם שפטור מהמצות מפני שאין בו דיעה אף שאין בו סימני שטות, והמשיך לבאר שמדין החרש נלמד גם דין הפתאים והמבוהלים והנחפזים בדעתם שאינם מבינים דברים כנכון וכמו שכי' הרמב"ם בהל' עדות (פ"ט ה"י) ומובא גם בשו"ע חו"מ (סי' ל"ה סעי' י'), וביאר שכל אלו החסרים בדעתם הרי הם בכלל דין החרש לכל דיני התורה ע"ש. הרי דנקט החת"ס דין החרש כמידה בדעת המחוייבת לדיני התורה, ולא כגזרת הכתוב גרידא. ובאמת בדברי מלכיאל (ח"א סי' ע"ח) השיג ע"ד החת"ס אלו מהאי טעמא שאין לדמות כל אלו הפסולים מחמת חוסר הבנתם לדין החרש הפסול אף כשנראה חריף ביותר וכמ"ש הצמח צדק (ע"י לעיל הע' 6), ואילו החת"ס כנראה סובר דרק חרש החסר בדעתו [והיינו כשאינו מדבר ואינו שומע ואי אפשר לדעתו להתפתח] הוא שנתקבל עליו הלכה למשה מסיני דפטור מן המצות, ומשא"כ בשדעתו נתפקחה. וע"ש בחת"ס שם שהסביר בזה סברת מאן דאמר (בגיטין ע"א). דחרש שלמד לדבר מתוך הכתב דהוי כפיקח, וכן סברת ר' אליעזר (ביבמות ק"ג). דמחייב אשם תלוי על קידושי חרש משום דמסקא ליה בדעתא צילותא [ומ' דסובר שגם החחולקים על מ"ד אלו

The historic precedent set by the *Kesav Sofer*, who reconsidered the Halachic status of the Jewish Deaf in light of the developments he observed, validated this second approach. Instead of maintaining the presumption that a *cheresh* who can neither hear nor speak is categorically exempted from all *mitzva* obligations, the *Kesav Sofer* reassessed their level of *daas* in accordance with their abilities to communicate. He apparently accepted as Halachically viable the view that the status of the *cheresh* is neither an absolute Biblical precept nor an invariable *Halacha L'Moshe MiSinai*. Rather, he opined that the lack of *daas* is simply the natural result of their inability to interact with others meaningfully and to interchange ideas effectively, and can therefore be reversed through the introduction and utilization of effective means of communication for them.<sup>19</sup>

This approach is especially understandable in light of the explanation presented above regarding the concept of *daas* as referring to the sense of responsibility upon which a mature person bases his choices and decisions. This sense is developed naturally through life experiences and learning from other people's reactions to that which one says and does, all of which foster an understanding of the type of thoughts, actions and behaviors that are regarded as normal and acceptable. Thus, it is the inability to talk with others and hear what they have to say that causes the Deaf to be classified as non-*bonei-daas*. Accordingly, upon the development of effective means of communication such as through modern sign language, the Deaf are indeed able to develop normative thinking and decision making processes – the essential criteria for Halachic *daas*.

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מודים ביסוד שדין החרש מידה בדעת וכני"ל, אלא דסוברים דדין ודאי הוא ולא מספיקא, וגם אין הכתיבה מועלת לתקנו ודו"ק]. (ויל"ע גם בחי' החת"ס למס' גיטין (כג.), ואכמ"ל יותר.) [ועי' בד' הריטב"א המוני' בהעי' הבאה דמוכח כדעת החת"ס דלא הוי הילכתא בלא טעמא וכמ"ש שם.]  
<sup>19</sup> וכן הביאו בתשו' מהרש"ם ובקובץ תשובות להגרי"ש אלישיב ז"ל (מוי לעיל העי' 9) דמשמע מחי' הריטב"א ליבמות (קד): שכי דקליש דעתיה משום שעומד נבהל כיון דלא שמע מה דקאמרי ליה עכ"ל הריטב"א, דהיינו מפני שהוא מנותק מהבריות ואינו שומע מה שמדברים ואינו מסוגל למסור להם מה שהוא חושב ויושב משומם, ומשא"כ כשלמד לדבר שיש לו קשר לבוא בדברים עם הבריות, עכ"ל הגריש"א שם. וכעין זה כ' הגרש"ז אויערבך ז"ל, כמובא לעיל העי' 17.

### **Practical Conclusions**

A number of significant conclusions can be drawn from the above.

1. Anyone who can speak intelligibly, i.e., such that an unfamiliar listener can understand the basic spoken message, albeit with some difficulty and without necessarily catching his every word, is definitely considered a *bar-daas* and fully obligated in the *mitzvos* of the Torah.<sup>20</sup>
2. Similarly, one who is not capable of oral speech but can hear effectively through his own unaided ears is definitely considered a *bar-daas*.<sup>21</sup> If, however, he can hear only with hear aids or a cochlear implant, his status is somewhat uncertain unless he is also able to speak, as above.<sup>22</sup>
3. Even those Jewish Deaf who do not speak orally nor hear aurally may be considered full *bonei-daas* on the basis of their ability to communicate manually through sign language. This is, however, the subject of a century-old Halachic debate, and as reasonable as it may seem to be, it is beyond our ability to determine with certainty.<sup>23</sup> Nonetheless, they should *not* be dismissed as definitely exempt, in light of the significant Halachic basis extant in support of their inclusion.<sup>24</sup>
4. Such people should definitely make every effort to fulfill all *mitzvos* to the best of their ability, and every opportunity should be afforded them to facilitate their inclusion and participation in the performance of the *mitzvos*.<sup>25</sup>
5. In all matters of Rabbinic Halacha, such people should be considered fully obligated.<sup>26</sup> They may therefore be counted in to compose the quorum of ten men as required in the Synagogue *minyan* or to participate in a *mezuman* of three or of ten for *Birkas HaMazon*.<sup>27</sup>

<sup>20</sup> ראה לעיל הערה 7-8.

<sup>21</sup> ראה שם.

<sup>22</sup> ראה הערה 12.

<sup>23</sup> ראה הערות 14-19.

<sup>24</sup> זו"ל הגרש"ז אורעבאך ז"ל במנחת שלמה (ח"א סוף סי' ל"ד) "יותר מסתבר כהבית שלמה (ראה לעיל הע' 10) דחשיב שפיר בני מצוות ... סוף דבר שלמעשה קשה להכריע בדבר שגדולי תורה אשר מימיהם אנו שותים כבר האריכו בזה, אבל גם קשה מאד לדחותם חס ושלום מקיום המצוות" עכ"ל.

<sup>25</sup> שם.

<sup>26</sup> שו"ת יחוה דעת ח"ב סי' ו'.

<sup>27</sup> שם. ולענין לקרותו לעלות לקריאת התורה, יש אריכות דברים, ויבואר לפנינו בעזה"ש.

## TORAS HACHERESH II

6. With regard to Biblical obligations, the manual, non-oral Jewish Deaf should definitely observe all Torah precepts like all other Jewish people, since it is quite probable that they are truly *bnei-daas*. However, they should not fulfill a Biblical *Mitzva* on behalf of those who can hear and/or speak (e.g., to blow the *shofar* for them on *Rosh HaShana*), since those others are obligated without any doubt.<sup>28</sup>
7. We can also conclude that it is of utmost importance that Jewish children be afforded every opportunity to become oral, i.e., to be given speech therapy to the fullest extent of their abilities. Only by developing their ability to speak verbal speech will they unquestionably establish their status as *bnei-daas* and ascertain themselves as *bnei-mitzva* fully qualified to participate in the fulfillment of *mitzvos*. This, in addition to the immeasurable benefit provided to them by enabling them to take advantage of Torah educational opportunities in oral schools and to become fully integrated into the broader Jewish community.

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<sup>28</sup> משנה וגמרא ראש השנה (כט.), גמרא ברכות (כ:).

**Chapter Two**

**FULFILLMENT OF MITZVOS THROUGH HEARING AIDS  
AND OTHER ELECTRONIC HEARING DEVICES**

Having dealt above with the functions of hearing, speech and communicative ability as they relate to determining one's status of *Halachic Daas*, we turn now to address the issues involved with fulfilling *mitzvos* – Torah obligations – that involve listening to speech, such as *kiddush and havdala*, *shofar*-blowing and *megilla*-reading, through hearing aids as well as other electronic hearing devices such as cochlear implants (CI's), FM systems, and Baha's (Bone-anchored-hearing-aids).

**HEARING AIDS**

As previously described (Part I Chapter 1), hearing aids are essentially miniaturized microphone systems, wherein audible acoustic sounds, such as from speech, are received by a microphone and converted into *inaudible* electronic signals, and then processed and transmitted to the h.a.'s speaker-unit where they are transformed back into acoustic sound waves, amplified as needed to enable the wearer to hear what is being said. It is important to note that both the initial transformation from acoustic sound to electronic signals and the subsequent retransformation back into acoustic sound are accomplished by means of electro-magnetic transducers,<sup>29</sup> and the resulting sound is produced using a foil diaphragm that is made to vibrate and recreate sound waves in precisely the same patterns as the original sound waves.<sup>30</sup>

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<sup>29</sup> Transducers are devices that transform energy from one form to another, in this case changing vibrating acoustic sound into electrical signals and then back into vibrating acoustic sound. Thus, both the microphone-unit that detects the original sound and converts it into electrical signals and the speaker-unit that reproduces the acoustic sound are technically transducers (see next note).

<sup>30</sup> This is accomplished by means of a tiny moving armature that is driven by the electro-magnetic force generated by the electronic signals, which in turn drives a foil diaphragm, thereby creating sound waves in precisely the same patterns and characteristics as the original sound waves. The resultant sound is indeed audible, albeit toned down to be heard within the closed confines of the sealed ear canal rather than in an open room. Thus, the hearing aid is indeed comparable to a telephone, radio or microphone system, all of which reproduce sound in essentially the same way. [The above is contrary to the notion published in *Tradition* Spring 09 that the amplified electronic signals that are generated by the hearing aid, themselves stimulate the eardrum and/or the auditory nerve – without using any vibrating membrane.

Thus, the sound that is ultimately heard by the hearing aid wearer is actually an electronic *reproduction* of the initial sound that was detected by the microphone, a precisely *duplicated* albeit amplified revision of that sound – but *not* the original sound-signal itself. Unlike a simple (non-electronic) megaphone, which projects the speaker's voice farther (like cupping one's hands around his mouth as he speaks), or a hearing-horn, which collects more of the acoustic sound waves and funnels them into the listener's ear, both of which increase the listener's ability to hear the speaker's original voice,<sup>31</sup> the hearing-aid, does *not* enhance nor amplify the original speech-signal itself. Rather, it produces an entirely *new* sound resembling and imitating it to practical perfection – but entirely new nonetheless. In this, hearing with a hearing aid is like a long-distance telephone call, through which the listener hears whatever the speaker says into the phone on his end, with exactly the same sounds and voice, but obviously does not hear the speaker's actual voice, from afar. Both are indeed amazingly similar, even identical, reproductions of the original sound, but *not* the original sound itself.

This understanding of the method through which these systems function, raises a serious and fundamental question regarding fulfillment of *mitzvos* that involve speech, by means of listening to the requisite readings and recitations through electronic amplifiers such as publically heard microphone systems or privately worn hearing aids, or, for that matter, through telephone connections, or even over live radio broadcasts. All of these systems operate essentially as described above, converting the original

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In reality, though, the eardrum is responsive specifically to vibrations and acoustic stimuli, not to electrons being shot at it, and such a notion is simply inconsistent with true transducer functionality. All of this information is easily verifiable from an abundance of sources readily accessible through searches re hearing-aid receivers and/or transducers, and was corroborated to this writer via email by researchers at Knowles Electronics, an internationally recognized leader in the field of transducer production, copy available upon request.]

<sup>31</sup> דין כלי זה מבואר בתשובה קדומה למהר"י חאגי"ז ז"ל בשו"ת **הלכות קטנות** (ח"ב סי' מ"ה) ומובא בבאר היטב בשו"ע או"ח (רס"י תקפ"ט) וז"ל חרש שמדבר ואינו שומע אלא ע"י שעושה כלי לאזנו כמין חצוצרת, נראה פשוט שחייב בשופר כו' והרי אמרו (סוכה לו':) לקיחה ע"י דבר אחר שמה לקיחה (לענין נטילת לולב), אף אנו נאמר שמיעה ע"י דבר אחר שמה שמיעה עכ"ל. [ויש לציון גם לדבריו שבתשובה אחרת שם (סי' רע"ו) בדין שמיעת בת קול היוצא ממערה רחוקה שקורין בה את המגילה, אבל לא נשמע קול הברה (שפסול בשופר כדאיתא במשנה ר"ה כז'): אלא בת קול ברור, אפשר דכיון דבעינן שומע ומשמיע ואותה בת קול שנעקר ונצטייר באויר ופורח אין לו עוד קשר עם המשמיע, דלא יצא, עכ"ל. והמו"ל בדפוס קראקא בשנת תרנ"ז הוסיף בהג"ה דלפי זה לא יצא אם שמע תקיעת שופר או מגילה ע"י פאנאגראף וטלעפון, וכן דן הגר"ש"ז אוירבאך ז"ל (מנחת שלמה ח"א סי' טו') ק"ו מזה לדין רם-קול, וע"ע בשו"ת ציץ אלעזר (ח"כ סי' י"ט בהוספה שבסוף התשובה) משי"כ על דברי ב"י תשובות אלו, ושיטות הפוסקים תתבאר לפנינו בעז"ה.]. וכ"כ תלמידו **הפרי חדש** (אבי"ע סי' קכ"א סק"ו) דחשיב שומע ע"י זה, והובאו דבריו בשו"ת **שבות יעקב** (ח"ב סי' ל"ג) וממנו **בשערי תשובה** בשו"ע או"ח (סי' תרפ"ט סק"ב), וכ"כ **מהר"ם חניב** בשו"ת קול גדול (סי' נ"ה השנ"ג), וכע"ז כ"ג גם בשו"ת **רבי עקיבא איגר** (מה"ת סי' ס"ד) לענין דין, ע"ש. ומי"מ לענין שופר בפרט יש שחששו לקול הברה היוצאת מהחצוצרת, ע"י מזה בסי' **תורת חיים** על שו"ע או"ח (סי' תקפ"ט סק"ב) וכן בשו"ת **התעוררות תשובה** (ח"א סי' ע"ט), אבל בסי' **קצה המטה** (על המטה אפרים באו"ח שם) כ"י שכשאו"ח החצוצרת דבוק לאזנו שוב אין שם קול הברה ומהני גם לשופר, ע"ש.

spoken sounds to electronic signals and then producing new sounds that duplicate the original sounds – but do not deliver the original sounds themselves to the listener. The question thus presents itself as to whether listening to such *reproductions* of sound can be considered hearing that which the reader read or that which was actually recited.

As a matter of background knowledge, it should be understood that the Halachic principle that generally provides basis for fulfilling speech-related *mitzvos* by means of listening to a another's recitation without each and every listener having to recite it themselves, is a rule known as "*shomea k'oneh*",<sup>32</sup> which means – *one who hears, is like one who speaks himself*. Thus, although every Jewish man and woman is obligated to say *Kiddush* on the onset of Shabbos and *Havdala* upon its conclusion, the universally accepted practice is that most people fulfill their obligations by listening to someone else's recitation (e.g., the head of the household) rather than reciting these blessings themselves. Similarly, the entire congregation fulfills its obligation to read the *Megilla* on Purim by listening to its reading, without every individual having to read it themselves. In each of these instances, those who hear that which is said fulfill their obligation just as does the one who actually says it himself.

However, as indicated by its title – *shomea k'oneh, one who hears, is like one who speaks*, this Halachic principle is predicated upon the listener *hearing* the speaker's recitation. Accordingly, one can only fulfill his obligation on the basis of this rule if he indeed *hears* the speaker saying that which needs to be said – not a mechanical reproduction thereof. Listening to a recording of such "*mitzva*" speech on any electronic media (e.g., tape, CD, Mp3, etc.) could not be considered hearing the original speaker and would definitely not constitute the "hearing" that is Halachically equated with saying, under the rule of *shomea k'oneh*.<sup>33</sup> The question is therefore apparent, is listening to an electronic reproduction of the speech that occurs simultaneous to the speech, as in the case of the various microphone systems mentioned above, substantially different and Halachically better than hearing a recording of that same speech?

<sup>32</sup> גמרא סוכה (לח:), שלחן ערוך או"ח (סי' קט ס"ג), משנה ברורה (סי' נו ס"ק טו), סי' סא סק"מ, סי' קכד ס"ק כא, סי' קלט ס"ק יב, סי' קסז ס"ק מה, סי' קפג ס"ק כד, סי' ריג ס"ק יז, סי' תכב סק"כ, סי' תפח סק"ה).

<sup>33</sup> מלבד משי"כ המגי"ה בשו"ת הלכות קטנות כמובא בהערה 3, דין זה מבואר בתשובה מהג"ר חיים ברלין ז"ל שנדפסה בשו"ת אהלי אהרן (ח"א סי' ס"ד) וכי שאינו יוצא בשמיעת ברכות ושופר ומגילה ע"י פאנאגראף (שנקרא אז בשם "גראמאפוני") שלא נקרא קול זה דיבור אע"פ שבא הקול מכח האדם, משום דכח דבורו כבר נפסק ולא נקרא כחו, והו"ל כקול הברה בעלמא, ע"ש. והוא הדין בשאר מכשירים האלו המשמיעים קול הנקלט בהם מכבר.

Furthermore, this rule of *shomea k'oneh* requires that the speaker himself be obligated in the *mitzva* as well. Thus, if one hears a *bracha* (blessing), or *Kiddush* or *Havdala* being recited by a child who is below the age of *bar/bas-mitzva*, they cannot “be *yotze*” (i.e., fulfill their obligation) thereby. Similarly, if one hears the *shofar* being blown by a woman (who is not obligated in such time-bound *Mitzvos*), or by a candidate for *geirus* (conversion) who has not yet completed the requisite process of *geirus*, they will need to hear it again from someone who is properly obligated.<sup>34</sup> And certainly, if a non-human, such as a “talking” parrot, could be trained to repeat a *mitzva* recitation, such as a *bracha*, one could not “be *yotze*” their obligation by listening to such chatter. By the same token, even though a machine, such as a tape recorder or an MP3 player, can indeed replay *brachos* and *mitzva* recitations, it definitely cannot serve as a valid means by which people could fulfill their *mitzva* obligations. So, the same question presents itself again, is listening to the electronic reproduction of speech as processed and heard through hearing aids and telephones distinctly better than any of the aforementioned recordings, and more like hearing the actual speaker, in which case it could provide means of fulfilling *mitzvos*, or is it also simply hearing a machine speak, and as invalid as listening to a tape recorder?

Many Halachic authorities, and Rav Shlomo Zalman Auerbach *ztz”l* in particular, are of the opinion that listening to *brachos* and *mitzva* recitations through any such electronic microphone systems is *not* considered like hearing the original spoken words in regard to this rule of *shomea k'oneh*, and does not constitute a fulfillment of the *mitzva*, for the reasons presented above.<sup>35</sup>

<sup>34</sup> משנה מסכת ראש השנה (כ.ט.), גמרא ברכות (כ.).

<sup>35</sup> הגר"ר שלמה זלמן אוירבאך ז"ל הוא מרא דשמעתא בהלכה זו ובמקצוע זה, שאינן וחקיקר מציוותיהם של מכשירים העלעקטרוניים כמכשירי שמיעה וטלפון ורם-קול ודומיהם, ובירר שבאמת אין מכשירים אלו מגבירים ומגביהים את הקול הראשון של איש המדבר כעין החצוצרת שדיבר עליו בשו"ת הלכות קטנות (ח"ב סי' מ"ה) הנאחו בידי כבוד השמיעה סמוך לאזנו לקלוט גלי-הקול ולקרנם לאזנו (ודלא ככמה פוסקים שלפניו שהשווים זה לזה מחמת חוסר הכרת דרך פעולת המכשירים), אלא שמפסיקים את קול הראשון ומייצרים מחדש קול שני הדומה בדיוק נפלא לראשון אלא שמוגבר כפי הצורך, וע"פ בירור זה הסיק להלכה שאי אפשר לקיים מצוות הדיבור והקריאה ע"י שמיעת הדברים דרך מכשירים אלו, שהרי איננו שומע קול המדבר אלא קול מכני הנוצר ע"י כלים אלו, והכלי איננו בר-מצוה ובר-חיובא שיוכלו השומעים לצאת ידי חובתם על ידו. עיין כל זה בשו"ת מנחת שלמה ח"א סי' ט' (ונדפס לראשונה בחוברת סיני כרך כ"ב שנת תש"ח, ושוב בקובץ מאמרים בעניני חשמל בשבת בשנת תשל"ח). ואחריו נמשכו כמה מפוסקי זמננו ששמעו הדברים ממנו, כהגר"ע יוסף ז"ל בשו"ת יביע אומר (ח"א או"ח סי' י"ט אות י"ח) ובשו"ת יחווה דעת (ח"ג סי' נ"ד, ועע"ש בח"ב סי' ס"ח), ואחריו נמשך יבחלי"ח הגר"י ווייס ז"ל בשו"ת מנחת יצחק (ח"ג סי' ל"ח אות ט"ז). וכ"כ הגר"מ שטרנבוך שליט"א במועדים וזמנים (ח"ו סי' ק"ה) ע"ש, וכ"כ גם הגר"צ עוזיאל ז"ל בשו"ת משפטי עזיאל (מה"ת או"ח סי' ל"ד), והגר"י וואלדינברג ז"ל בשו"ת ציץ אליעזר (ח"ד סי' כ"ו, וח"כ סי' י"ט אות ז' ושם בהוספה שבסוף התשובה).

Nonetheless, Rav Moshe Feinstein *ztz"l* (*Igros Moshe O"Ch 2:108, 4:91*) is of the opinion that one can indeed fulfill *mitzva* obligations by listening to the requisite readings and recitations while wearing hearing-aids. Notwithstanding the fact that they produce an entirely new sound rather than delivering the original sound to the ear of the listener,<sup>36</sup> that new sound can be considered essentially an extension of the original sound, and hearing it to be like hearing the voice of the speaker. The fact that this new sound is made entirely by the speaker's speech as he speaks and is identical to his speech, is sufficient reason to consider hearing it to be hearing the speaker himself. The *Chazon Ish* (as related by Rav Shlomo Zalman himself),<sup>37</sup> as well as other leading Halachic authorities,<sup>38</sup> concur with this opinion.

In fact, notes the *Igros Moshe*, natural hearing also consists of a series of reproduced sounds, starting in the mouth of the speaker, traveling through numerous sound waves across the space between the speaker and the listener, and then step by step through the various parts of his middle and inner ears. Each of these components vibrates in sync with the original sound, mimicking that which was initially emitted from

<sup>36</sup> יש להדגיש שדברי האגרות משה בזה אמורים בקבלת הנחה זו של המומחים "שלא נשמע קול האדם אלא קול אחר הנעשה מקולו" (לשונו שם בח"ב), ולמרות שמודה שם שלא נתברר לו ענין זה כראוי, ולדעתו עדיין אינו ברור מבעלי סמכא מה שאומרים שהוא קול אחר, מ"מ ייסד דבריו בזה על הנחה זו כמו שכתב שם להדיא, וחזר ושנה ושילש לכתוב כדברים האלה באג"מ או"ח ח"ג (סי' נ"ה אות ד') וז"ל "דלא נשמע מהמיקרופון אותו הקול ממש שמדבר האדם אלא בדיבור האדם נברא שם קול אחר והקול האחר נשמע לשומע" וכן כתב בח"ד (סי' פ"ד אות א') "דיש לידע שהקול הנשמע מהמיקרופון איננו קול האדם עצמו אלא כשהאדם מדבר נעשה רושם של הברותיו ומה שנשמע הוא הקול ההברתי, וכ"כ עוד שם (סי' פ"ה ד"ה והחששות). ומבואר מכל זה ששיטתו בהלכה זו מתאימה – לדעתו – עם המציאות כפי התפיסה המקובלת שקול הראשון נפסק לגמרי וקול שני נוצר במקומו ע"י מערכה זו, ואין לדחות דבריו מטעם בירור מציאות זו (כל זה דלא כמש"כ בתשו' יחווה דעת ח"ג סי' נ"ד).

<sup>37</sup> כן כתב הגרש"ז אורבאך עצמו (בהערה במנחת שלמה שם) שדיבר בדין זה עם מרן החזון איש ז"ל, והגם שעמד כנכון על מציאות הדברים כהויתן מ"מ אמר לו שלדעתו "כיון שהקול הנשמע נוצר ע"י [קול] המדבר, וגם הקול [הנוצר] נשמע מיד כדרך המדברים, אפשר דגם זה חשיב כשומע ממש מפי המדבר או התוקע". וכי עליו הגרש"ז "לע"ד הוא חידוש גדול מאד ואין אני מבין אותו", וזה כשיטתו המובאה למעלה, אמנם סברת החזו"א מתיאמה באמת לסברת האגרות משה.

<sup>38</sup> כן נוטה דעת "גדול ההוראה" (כך קראהו המנחת יצחק, והציץ שליעזר כינהו "גאון ההוראה") ש"ב הג"ר צבי פסח פראנק ז"ל בתשובה המובאת בשו"ת מנחת יצחק (ח"ח סי' קי"ג) שבתקיעת שופר דוקא הוא דאינו יוצא בשמיעה ע"י מכשיר שמיעה משום דתערובת הקול מעכבת בו, אבל בקריאת התורה ומגילה יש לדון דשפיר יוצא, שכל הקולות כשרים והרי שומע קול הקורא והכל הוא מכח הקורא שהוא בר חיובא, ע"ש. וכ"כ במקראי קודש שלו (פורים סי' י"א), וע"ש בהערה 2 מנכדו הגר"י כהן ז"ל שביאר שדבריו אמורים אפילו אם נאמר שלא נשמע קול האדם עצמו אלא קול אחר, דכיון שלא נפסק כח קול המדבר, ולא נשמע קול השני אלא כשהקורא קורא, והכל בא מכח קריאתו, נחשב גם קול השני כקולו ממש, ע"ש, ועולים דבריו בקנה אחד עם דברי האגרות משה והחזו"א הנ"ל. וכן פסק הגה"צ ממונקאטש ז"ל בשו"ת מנחת אלעזר (ח"ב סוף סי' ע"ב) שאף שאין לצאת ידי מצות שופר ע"י טלפון מ"מ יכול לצאת בכך לענין מקרא מגילה. גם בשו"ת שבט הלוי להגר"ש וואזנער ז"ל (ח"ה סי' פ"ד) כי שבעיקר דין הקריאה [במגילה ע"י רם-קול] הוא נוטה למש"כ באגרות משה שאין זה דומה לקול הברה [דפסול לתקיעת שופר], דהתם הוא תערובת קול אחר והכא הוא אותו הקול אלא שהגבר ע"י המייקראפאן, עכ"ד. [ומובן מאליהו שמש"כ דהכא "הוא אותו הקול" כוונתו מבוארת בדברי האג"מ שהסתמך עליהן בתשובתו הלזו, ודלא כמי שרצה לדחות דבריו מטעם זה.] וע"י עוד בהערה הבאה שכן כי כבר הגר"י ענגיל ז"ל. וביחווה וע"י במשפטי עזיאל הנ"ל שכי לדחות דברי המנח"א הנ"ל, אמנם בצ"ץ אליעזר (ח"ח סי' י"א אות ה') כי לצדק דבריו, ע"ש. דעת הנ"ל כתב לדחות דברי האג"מ והגר"פ והגר"י כהן והחזו"א, וכשיטתו הנ"ל ע"פ דברי הגרש"ז ז"ל, וכן תמה במועדים וזמנים (ח"ח בהערות לח"א סי' א' ולח"ו סי' ק"ה) על דברי החזו"א והאג"מ, וכן תמה הגר"מ שטרן ז"ל בבאר משה (ח"ז קונטרס עלעקטריק סי' ל"ג) על די האג"מ ע"ש, וכמש"כ דעתו כבר בח"ג (סי' קס"ו).

והאמת יורה דרכו שיעקר מחלוקתם בזה איננה במציאות הדברים אלא בסברא בהלכה, אם יש להחשיב קול שני הנעשה מכח קול הראשון באמצעות מערכת מכשירים מלאכתיים כהמשך מקול המדבר או לא, שזהו יסוד חידושם של האג"מ והחזו"א ודעמייהו שיש להחשיבו כקולו, וממילא שאפשר לקיים מצוות הדיבור ע"י, והגרש"ז ז"ל וסייעתו לא שמיעה להו ולא סבירא להו סברא זו כלל, וככל מחלוקת הפוסקים בדיני התורה סופה להתקיים עד שיבוא מורה בב"א.

the mouth of the speaker and instantly transmitting its vibrations on to the next point in the series. And just as hearing the end result of this series of transmissions constitutes hearing the speaker's speech, so too is hearing live speech via a microphone or hearing aid also considered hearing the original speech. He concludes that it is therefore reasonable to say that listening to the end sound of either means of hearing is considered as listening to the speaker himself and satisfies the *halachic* requirements of *shomea k'oneh*.<sup>39</sup>

It should be noted, though, that although Rav Moshe z"l (ibid) considers this reasoning to be Halachically sound and acceptable in principle, in practice he advocates seeking alternative arrangements and to avoid having to rely on this leniency. For instance, rather than allowing a large gathering of people to hear the *megillah* reading via a microphone system, he rules that they should separate into smaller groups so as to facilitate their hearing the reader's voice without amplification.

We can therefore conclude that, wherever feasible, one should not listen to *mitzva* recitations over the telephone, radio, or by other means of electronic amplification, in order to fulfill the *mitzva* obligations with certainty, according to all opinions.

If and when possible, it would be clearly be best for the hearing impaired person to recite a *bracha*, such as Kiddush, him\herself, rather than fulfilling the *mitzva* by listening to another person's recitation, and they would then definitely be 'yotzei' according to all Poskim.<sup>40</sup>

<sup>39</sup> השוואה זו למהלך שמיעה טבעית נמצא כבר בסי' גליוני השי"ס להג"ר יוסף ענגיל ז"ל (ברכות כה. ד"ה ערוה בעששית) שדן בדין שמיעת קול שופר ומקרא מגילה ע"י טלפון וכי "ובזכרוני מספרי המחקרים הטבעיים דאין הקול עצמו של המדבר הוא הבא לשומע, אך קול המדבר מרעיד חלק האויר שסמוך לו, וחלק זה לסמוך לו וכן כסדר (היינו גלי הקול) עד שנרעד חלק האויר שבאוזן השומע. ולפי זה כל השמעה תמיד רק גרם, והוי כל השמעה ע"י דבר אחר, ותו אין לחלק בין השמעה סתם לעל ידי טעליפאון" – הרי שמדמה קול הנשמע ע"י מכשיר עלעקטרוני לשמיעה רגילה שע"י כמה וכמה גלי הקול, וכמשי"כ האג"מ הני"ל. [ואף ששוב דחה הוכחה זו וכי שאין לדון מהשמעה סתם לשעל ידי דבר אחר ממש כטלפון כיון שזו דרכה וטבעה בכך משא"כ בזה, מ"מ מסיק להלכה ע"פ תשובת ההלכות קטנות שגם שמיעה ע"י דבר אחר שמה שמיעה ומועלת לשופר ולמגילה, ע"ש. ובמקראי קודש הני"ל הביא הגרצ"פ פראנק דבריו אלו וחילק בין שתי מצוות אלו, שאכן קול שופר הנשמע ע"י מכשירים פסול, אבל כששומע למקרא מגילה ע"י כך יש לדון דשפיר דמי.]

<sup>40</sup> בדין חרש המדבר ואינו שומע שיוצא במה שאומר בעצמו, אפילו כשקורא את המגילה לעצמו, כמשי"כ במשנה ברורה סי' תרפ"ט סק"ה וביאור הלכה שם, וכל שכן בשאר מצוות שיוצא באמירתו. ואע"פ שאינו משמיע לאזניו מה שהוא אומר, אין זה מעכב, עיי במשנ"ב שם ובסי' ס"ב סעי' ג' ובסי' קפ"ה סעי' ב'. וביותר בנידן דידן ששומע מיהת ע"י המכשירים, מסתבר שיש להחשיב שמיעה זו לכל הפחות לענין הדין שצריך להשמיע לאזניו מה שמוציא מפיו, כיון שהוא רק לכתחילה, וי"א שהוא מדרבנן, עיי משנ"ב סי' ס"ב סק"ד, וכעין הכרעת היחוד דעת ח"ב סי' ו' שבכל מיילי דרבנן יש לסמוך על דעת המקילים לצאת ידי חובתו בשמיעת המצוות בעזרת מכשירים אלו, וכל שכן כשאומרו בעצמו ואינו צריך לשמיעתו ע"י המכשירים אלא כדי להשמיען לאזניו. וכן לענין להיות החובש מכשירי-שמיעה יורד לפני התיבה בתור שליח צבור, אף שהביא המשנ"ב סי' נ"ג ס"ק מ"א מחידושי רע"א שמי שאינו שומע כלל לא יהיה ש"ץ כיון דלכתחלה צריך להשמיע לאזניו אינו מוציא אחרים לכתחלה, נ"י שאין השומע ע"י מכשירים

When this is not practical (e.g., for women, particularly re *Havdala*; for *Megilla* reading on Purim), hearing aid wearers who are not entirely dependant upon them, such as those with mild to moderate hearing losses, should preferably remove them and listen directly by means of their residual hearing, if this is at all possible (preferential seating in close proximity may help facilitate this). [In regard to listening to Shofar blowing on Rosh HaShana, it should be noted that the sound of the Shofar is much louder than normal speech, and many of the severely hearing impaired who must wear aids to hear speech, may find that they can hear the Shofar even without them, especially if they stand nearby.]<sup>41</sup>

This is, however, most often not a viable option for those with more severe losses, and they should therefore listen while wearing their hearing aids [when it is impractical for them to recite the *bracha* themselves]. Under such circumstances they have ample grounds and major Halachic authorities to rely upon that they will indeed fulfill their *mitzva* obligations through this means of hearing as well.<sup>42</sup>

בכלל מי "שאינו שומע כלל" כיון שלכמה פוסקים מועלת שמיעתו אפילו לצאת ידי חובתו וכל שכן לדינא דלכתחילה דלהשמיע לאזניו וכנ"ל. [זה מלבד מה שהעיר בסי' אורח נאמן שם סק"ה שבזמננו אין הש"ץ מוציא את הרבים ידי חובתם בדרך כלל, ועיי' בביאור הלכה סי' קצ"ט סי' ד"ה מצטרפין שסמך על סברא זו להתירו להיות מזמן בברכת המזון אבל דחה אותה לענין תפלת הש"ץ. אמנם השומע ע"י מכשירים עדיף יותר וכנ"ל].  
 ופשוט שיש לצרפו למנין עשרה בבית הכנסת ולשאר דברים שבקדושה כמו לזימון בשם ולשבע ברכות, כדמפורש בשו"ע או"ח סי' נ"ה סעי' ח', ובמשני"ב שם ס"ק ל"ח כ' דאפילו אלו הפוסקים החולקים על המחבר בזה מודים שמצטרף כשיודע מה הם אומרים ועונה אמן עמהם ע"ש, וזה המדבר החובש מכשירים בודאי יודע מה שאומרים ויכול לענות עמהן.  
 ולענין להעלותו לתורה כ' הפרי מגדים או"ח סי' קל"ט מש"ז סק"ב "מדבר ואינו שומע רשאי שיקרא עם הש"ץ", והיינו כל שיכול לקרות בעצמו לכל הפחות שלשה פסוקים מתוך הספר תורה (שיעור הפחות לכל לקורא בתורה, עיי' שו"ע סי' קל"ז). ואם אינו יכול לקרות בעצמו וסומך על שמיעתו לקריאת הבעל-קורא (כהגהת השו"ע שם סעי' ג' ומשני"ב ס"ק י"ג), תלוי בשיטות הפוסקים אם יוצאים בשמיעה דרך מכשירים, ולהכרעת היחודה דעת הני"ל אפשר להקל במילי דרבנן. ועיי' בשו"ת תשובות והנהגות ח"א סי' קמ"ט שנטה להקל יותר בקריאת התורה כיון שעיקר תקנתה משום לימוד התורה.  
 ולענין שיקרא הוא כבעל קורא בתורה, עיי' שם סי' ק"נ שצידד להקל בזה רק במפטיר, ובפרט לגבי בר-מצוה [ואפשר גם בעליות נוספות, כמו אחרון, כיון שכבר נתקיימה עיקר התקנה בשבעה קרואים, ועיי' שם]. ועיי' בשו"ת לב אריה ח"ב להגרא"ל גרוסנס ז"ל שהקיל גם בכל הקריאה על פי הסברא דעיקר תקנת קריאתה היא משום לימוד התורה, עיי' שם. וכל זה בחרש שאינו שומע כלל, אבל במדבר השומע מיהת ע"י מכשירים יש מקום להקל יותר, וכנ"ל.

<sup>41</sup> As measured by the author in the Kennedy Institute, Baltimore MD, Dept. of Audiology, in August '85, the shofar sound has a volume level of approximately 100-110 decibels, as compared to the 30-35 dB level of average speech.

<sup>42</sup> הנה אף שלמעשה לא נחית האגרות משה להתיר לקרות המגילה ע"י רם-קול, ובתשובתו שבחלק ב' כ' מתחילה שאין למחות ביד המקילים ושוב כ' למחות כדי למונעם מלרדוף אחר היתרים חדשים נוספות, ובתשובתו שבחלק ד' העדיף למצוא עצות אחרות אך להשמיעה לכולם מבלי לסמוך על היתר זה, כל זה בדאפשר להם לצאת ידי חובתם בענין אחר, אלא שרוצים להקל ולהשתמש רם-קול מטעמי הנוחיות בלבד. משא"כ בנידן דידן בכבדי השמיעה, שאילולי זאת אין להם עצה ותושיה אחרת אך לצאת ידי חובתם, ולרובם ככולם הוא מן הנמנע לקרותה בעצמם, ובדלית ברירה אין מקום למחות מלסמוך אעיקר דדינא, ועל זה וכיוצא בו איתמר (יבמות מו. וש"ס) וכי דנים אפשר משאי אפשר, ואיתמר נמי (עירובין מו. וש"ס) כדאי הוא אפילו דעה יחידה לסמוך עליו בשעת הדחק, וכל שכן בזה שיטתם כמה וכמה מגדולי הפוסקים כהאג"מ והחזו"א והמנחת אלעזר והגר"י ענגיל והגרצ"פ לסמוך עליהם להתירא בדלא אפשר בענין אחר.

ואף **הציץ אליעזר**, הגם שהסיק להורות שאין לצאת ידי חובת המצות בשמיעתם ברם-קול, וכמש"כ בתשובותיו (בח"ד ובח"כ) הני"ל, מ"מ כתב (בח"ח סי' י"א אות ט') שבמקרה שאין ברירה אחרת, כגון בבית-חולים גדול שאי אפשר להשמיע המגילה לכולם כי אם ע"י רם-קול, המורה להתיר זאת אף לכתחילה אין מזחיחין אותו. וכ"כ שם לפני זה (באות ט' סוד"ה ועתה) שלא ברור לשלול אפילו שמיעת קול שופר ע"י מכשירי שמיעה לכבדי השמיעה שאין להם דרך אחרת לקיים מצוות אלה, עיי' שם. וגם בשו"ת **שבט הלוי** הני"ל כ' שאף שאין להתיר זאת "בנודון רגילי", מ"מ "אם יוולד מציאות של ביטול הקריאה לגמרי אם לא ע"י עצה הני"ל" (כלומר לשמוע ע"י רם-קול) יש מקום להתיישב ולדון להתיר "כיון שמעיקר הדין קרוב שיצא" וכמש"כ באגרות משה, "אבל לא נשאלתי על זה" עיי' שם. ואכן מציאות זו באמת קיימת בתמידות אצל רבים מכבדי השמיעה, הן אלו שנוולדו כך מבטן אמם והן אלו שכבדו אוזנם מזוקן, כל

**COCHLEAR IMPLANTS**

Cochlear implants (CI's, sometimes called "bionic ears"), like hearing aids, provide much benefit to the hearing impaired, boosting their ability to hear speech and other sounds, and in fact generally surpass the hearing aids in both the degree of boost they can provide, and the clarity and quality of their sound. Notably, though, the way in which they function differs fundamentally from that of hearing aids, and this difference may give them a significant advantage with respect to their usage in the fulfillment of *Mitzvos* that are spoken and/or heard (e.g. *Kiddush*, *Havdala*, *Megilla*, and even *Shofar*).

The essential difference between them lies in their basic functionality and the means by which they enhance the hearing of their users.

Hearing aids, on the one hand, benefit the hearing impaired by *amplifying* the sound to the desired volume level. This is accomplished, as described above, by reproducing the sound anew via an electronic speaker unit. Thus, the sound that the wearer eventually hears is actually an electronic *duplication* of the original sound, *not* the initial sound itself, which is the root of the issue as to whether or not one can fulfill *mitzvos* through hearing in this manner.

Cochlear implants, on the other hand, **do not** amplify the sound nor produce any new sounds at all. In fact, they don't even have a speaker unit (nor any vibrating, sound-producing membrane) as do hearing aids. Rather, they benefit the implantee by sending electronic nerve-stimulating signals, produced by the original sounds, directly to the auditory nerve and thereby to the hearing center of the brain. In effect, the user ends up hearing the original sound itself – **not** a reproduction or amplification thereof.

To describe this process more fully, when a normal hearing person hears sound, his outer ear collects sound waves from the air and passes them through his ear canal (where low frequency sounds are amplified). His eardrum (or *tympanic membrane*) will vibrate in response, causing ripple effects through a series of three delicate bones (*ossicles*, the *malleolus*, *incus* and *stapes*, commonly known as the hammer, anvil and

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שאינם מסוגלים לשמוע מפי הקורא או המברך מבלי לחבוש מכשירי השמיעה שלהם הרי אין להם דרך אחרת לקיים מצוות רבות, וכאמור יש להם הרבה מגדולי הפוסקים לסמוך עליהם.

stirrup). This will convert the lower-pressure sound vibrations of the eardrum into higher-pressure vibrations in a smaller membrane situated in the innermost end of the middle ear. The fluid in the inner ear (the *cochlea*) will then move in sync with these vibrations, causing countless tiny hair cells (sound receptors) located therein to pulsate, whereby the sound-vibrations are wondrously converted into electro-neuro impulses.<sup>43</sup> These impulses then stimulate the auditory nerve, which is actually a series of nerve complexes and parts of the brain that participate in processing the message and “hearing” the “sound.”

Cochlear implants simulate this very same process. They receive sound waves through a microphone located on a headpiece outside the ear, just as the outer ear does in the natural hearing process. From there an electronic signal is sent to the speech processor, which sends the signals to a transmitter-coil located and magnetically secured on the head of the implantee, directly above the internal implant. This coil transmits then these signals via radio waves to the implanted receiver, where they pass through an electrode array inserted into the cochlea, and stimulate the auditory nerve – just as occurs in the healthy cochlea. The auditory nerve then carries the neuro-electrical signals to the brain, just as it does in the natural hearing process.<sup>44</sup>

The fact that this process does not involve producing any secondary sound as does a telephone or hearing aid may obviate the main Halachic issue that is raised and debated with regard to fulfilling *mitzvos* by listening through such devices. Although CI's, being relatively new developments, were not addressed by most of the authorities who dealt with telephones, microphones and hearing aids, some senior contemporary authorities have affirmed this Halachic distinction, ruling that one can fulfill his

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<sup>43</sup> Understanding this process, from which we all benefit nearly every moment of our hearing lives, is truly a notable glimpse into the absolutely amazing *niphla'os HaBorei* – the miracles of the Creator! [As so aptly expressed by the Chazon Ish: טבע הוא הרצון היותר תמידי של הבורא ית' – nature is but the most constant and regular will of the Creator, demonstrating continuously His infinite creativity.]

<sup>44</sup> Information culled from the Clarion Corporation's Introduction for Parents and Children, Multi-Strategy Implant System, and from the National Institutes of Health (NIH) Consensus Development Statement: Cochlear Implants in Adults and Children, '95 (unpublished papers).

obligations by listening with CI's – even if one could not do so while wearing hearing aids.<sup>45</sup>

Others disagree and would equate CI's to hearing aids for all Halachic considerations, despite the technical differences between them described above.<sup>46</sup>

However, even according to this latter opinion, hearing through CI's is at least as valid as via hearing aids. Considering the fact that implant recipients generally cannot hear in any other manner, they, too, have ample basis to rely that they can fulfill their *mitzvos* in their manner of hearing, as explained above regarding hearing aids. This is all the more so in the case of CI's – when taking the opinion of the senior contemporary authorities cited above into account as well.

### **FM Systems**

Personal FM systems can provide direct audio-input to either hearing aids or CI's and thereby enhance the hearing of their users in many circumstances, such as in noisy environments (e.g., when learning in a packed *beis-medrash*). The validity of fulfilling

<sup>45</sup> יש תחת ידי העתק מתשובה בכת"י הגר"ש וואזנר ז"ל משנת תשס"ג וז"ל לעניו כבודות השמיעה של כו' וכ"ת הציע פיתוח חדש שהמציאו כלי מיוחד שמשתילים תוך הכוכליאר כו' וע"י פיתוח הנ"ל לא נעשה שום קול או הגברת קול אלא הכלי הקטן הנ"ל מעורר עצב השמיעה להעביר קול הרגיל למוח ועושה הפעולה במקום השערות שנחלשו וכו' לפי הציור ודאי אינו דומה למה שנשאו ונתנו כמה אחרונים בחששות של מגביר קול, כיון דבנידו דידן העצב של השמיעה מקבל קול הטבעי ומתרגמו למוח, וא"כ כל זמן שלא נשמע אחרת במציאות הזה שיכול לשנות ההלכה, נראה דקיל הרבה מנדון האחרונים וישתמש בזה עד שיזכה לרפוי"ש מו השמים, עכ"ל.

עוד נמצא בידי העתק מתשובה שכתב הגר"מ שטרנבוך שליט"א ג"כ בשנת תשס"ג (ונדפס שוב בקובץ עטרת שלמה ח"ט עמ' קנ"ד) וז"ל בנדון המכונה "שתל כוכליארי" מסתפק כיון שאין דרכו בכך אולי לא נקרא שמיעה ולא יצא שופר או קידוש, נראה דאין כאן שאלה [של] שלא כדרכה וכו' ומיהו יש לצדד שאינו יוצא שלפי שמתברר אין איכות השמיעה אצלו ככל אדם כו' ומיהו נראה כיון שאצלו זוהי השמיעה נקרא דרכו וכו' ואף שאינה ככל אדם כיון שזהו דרכו מספיק בכך. ויש לצרף דעת החזו"א זצ"ל שנוטה אפילו במגביר קול יוצאין כיון שעכ"פ שומעין ממנו, בודאי כאן יוצאין, ואין דעתי להחמיר בזה שירגיש נחיתות, ונראה שיצא תקיעת שופר וקידוש וכמש"נ, הרי דבנידון שאלתו דעתי שיוצא וכמ"ש, עכ"ל. [ויש להדגיש שהגר"מ שטרנבוך הוא מהסוברים כהגרש"ז אויערבאך ז"ל שאין יוצאים בשמיעה שע"י רם-קול וטלפון ומכשירי שמיעה, ותמה על דעת האג"מ וכמובא לעיל, ואעפ"כ הרי הוא מקיל לענין שתל כוכליארי שכן יוצאים בו, ואפילו בתקיעת שופר.]

<sup>46</sup> כ"כ הגר"ש ברייש בקובץ נזר התורה (אלול תשס"ח, עמ' שלי"ה) ע"פ מה שביררו לו שגם מכשיר זה מוציא קולות כמו שקולט ו"אין שומעים את הקולות של האדם [המדבר] אלא את הקולות של עץ ואבן", וכ"כ גם הג"ר אשר וויס שליט"א בקובץ אור השבת (חוברת י"ט עמ' ז') ודימה שגם ההשתלה מוציא קול מלאכותי ומעבירו לעצב השמיעה ולכן מסיק "הרי הנפקא מינא בין השתל לבין מכשיר שמיעה אינו אלא באופן השמיעה, אבל אין ביניהם הבדל בענין קול הנשמע", וכנראה לא שמיעה להו המציאות שאין השתל מוציא או מחדש שום קול וחלוק הוא בזה ביסודו ממכשיר שמיעה. ושוב ראיתי בתשובות המצורפות לקונטרס יעיר לי אוזן (תשע"א) שנענה שנענה הגר"א וויס לטענה זו שלא עמד על מציאות הדברים כנכון, וצידד להחמיר אעפ"כ מכח סברא דנפשיה שאין זו שמיעה האמורה לכל דיני התורה, ומ"מ מסיק בנוגע לאלו שאין להם אפשרות אחרת לקיים המצוות "ודאי יש לו לשמוע ע"י המכשיר [ההשתלה], כיון שאין לנו בזה הלכה למשה מסיני ובסברא אין בכל זה הכרעה ברורה ומוחלטת."

spoken *mitzvos* heard with their assistance will depend entirely and be identical to the Halachic status of the particular device that they supplement.

These systems consist of a microphone unit, typically worn by the person speaking with the hearing-impaired individual, which picks up the speech sounds and then transmits silent FM signals [radio-waves that use the “Frequency Modulation” (“FM”) method of transmission, which is advantageous in reducing background noise and improving the signal to noise ratio] to a receiver unit attached to the hearing aid or the CI.

Most relevant to our discussion is the fact that no new sound is produced by the FM system, such that it does not compromise the use of a CI in fulfilling *mitzvos*, nor does it affect their fulfillment for hearing aid users. Accordingly, in as much as hearing aids may or may not be an acceptable means of hearing spoken *mitzvos*, in accordance with the various opinions presented above, the use of an FM attachment will not change this status. And similarly, according to those authorities who approve the use of CI’s for *mitzva* fulfillment above that of hearing aids, the same would hold true when using an FM system in conjunction with the cochlear implant.

### ***Baha’s***

The Baha [Bone-anchored-hearing-aid], an innovative means of transmitting sound through bone conduction, primarily used by people with conductive hearing losses (rather than *sensorineural* hearing losses as described above),<sup>47</sup> might be comparable to the CI rather than conventional hearing aids, in respect to the fulfillment of *mitzvos*. But first let’s understand what it is and how it works.

These individuals have a healthy cochlea in at least one of their ears, but suffer a loss of hearing due to some occlusion or blockage of their outer and/or middle ears, which precludes the passage and conduction of sound wave vibrations through these

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<sup>47</sup> More recently, the Baha is also being used in cases of unilateral sensori-neural hearing losses (i.e., affecting only one ear), to conduct sound from the deaf side to the side with the functional cochlea, via the skull. In context of this discussion regarding fulfillment of *mitzvos*, their status is identical regardless of the underlying reason for their usage.

points to the inner ear, the cochlea. Thus, amplification, as through standard hearing aids, is not effective for them, for even the amplified sound would be unable to pass through their ear. Bypassing the cochlea via a CI is also not indicated in these cases, since their cochlea itself is fully functional.

Instead, the Baha utilizes the user's skull as a pathway for sound to travel to the inner ear. It bypasses the affected auditory canal and middle ear, and instead, sends sound-vibrations directly to the cochlea, reaching the inner ear via the alternative route of the skull-bone. This is typically<sup>48</sup> accomplished via a titanium "post" that is surgically embedded into the skull (hence the name "bone-anchored"), with a small abutment exposed outside the skin. The external Baha sound processor sits upon this implanted post and transmits sound-vibrations to the skull, and through it – all the way to the inner ear (i.e., the healthy cochlea), where the auditory nerve fibers are stimulated and carry the signals to the hearing center of the brain, just as they do in the normal hearing process.<sup>49</sup>

What is most significant about the Baha from an Halachic perspective is that it does *not* produce nor reproduce any sound, as do hearing aids, PA systems, and telephones. Rather, it receives the acoustic sound-signals from the sound-waves in the air and sends sound-vibrations to the inner ear, from which point and on hearing is essentially natural, notwithstanding the unnatural route through which it is delivered. Thus, the user ultimately hears only the original sound itself, *not* a reproduction or duplication thereof. Sharing this advantage with the CI may qualify the Baha, too, to be considered an Halachically valid means of fulfilling *mitzvos*, even according to those authorities who would not say the same regarding conventional hearing aids.

אז אילם בשיר ירון: May the day come soon upon which it says:

– *then the mute will burst forth with song.*<sup>50</sup>

<sup>48</sup> Younger children with conductive hearing losses may be fitted with a Baha device on a headband rather than with the a surgically implanted auditory post.]

<sup>49</sup> Information culled from publications and websites of the National Institutes of Health (NIH), the University of Maryland, and other readily accessible hearing-loss related sources.

<sup>50</sup> מנוסח המזמן לברכת המזון של שבע ברכות, המיוסד על נבואת ישעיהו (לה ו') - אז תפקחנה עיני עורים ואזני חרשים תפתחנה, אז ידלג כאיל פסח ותרון לשון אלם. ורש"י ומהר"י קרא שם פירשו שיש בנבואה זו הן רפואת הנפש והן רפואת הגוף לעתיד לבא במהרה בימינו אמן.