

Allowing Gentile Therapists to Work on Shabbos

Chaim, who lives in Lakewood, owns purchased a therapy company that currently has employees, that live in Massachusetts and Georgia. Clients contact Chaim and he connects the client with the local therapist, and then the client and therapist communicate with each other concerning scheduling and whether to meet in person or whether to meet online – teletherapy. After each session the therapist sends the details of the session to Chaim who bills the client’s insurance. Chaim pays the therapist every two weeks and, in most instances, he advances the money to the therapist because it takes the insurance company and month or two to pay claims. For simplicity, let us say that the insurance company pays \$100 per one hour session and Chaim pays the therapist \$75 an hour and retains for himself \$25. Is Chaim permitted to allow the therapists to work on Shabbos? If there are grounds to allow the therapists to work on Shabbos, is there an issue of *sechar Shabbos* for Chaim to earn \$25 for sessions that take place on Shabbos?

At first glance it seems that this structure will be problematic. When an employee is paid for her time, whether an hourly rate or a daily rate, called a *sechir yom*, that employee may not perform *melachah* on Shabbos for her employer¹. By definition, a *sechir yom* is always performing the agency of her employer and consequently, the *melachah* is traced back to the employer and it violates the prohibition of *amirah l’akum* – instructing a gentile to perform *melachah* on Shabbos².

In many instances a family’s insurance will cover a certain number of sessions of therapy. Since there is no goal to complete, just a predetermined number of hours of therapy and indeed, the insurance company pays an hourly rate for each session, the employment has all the defining characteristics of a *sechir yom* and will prove difficult to justify allowing the therapist to work on Shabbos, even though she, together with the family, choose to work on Shabbos³.

¹ M.B. 252:23

² It is important to note that not all therapy is the same and there are many instances in which therapy could be performed without *melachah*, e.g., exercises and games played with a child to increase their grip strength constitutes a therapy session that does not involve *melachah*. Therefore, it is essential to determine whether *melachah* is necessary for the therapist to do her job or not. In cases where it is not necessary, but she chooses to do *melachah* during the session, that *melachah* is not traced back to her employer and she may work with the client, even though *melachah* is performed.

³ There is an interesting debate amongst the *Poskim* about an employee who is paid an hourly wage but has the freedom to decide when and how often to work. Some *Poskim* focus on the fact that he is paid an hourly wage and as such categorize the employee as a *sechir yom*. Other *Poskim* argue that the freedom to work whenever he chooses means that the employee has not sold his time and as such should be categorized as a קבלן, an independent contractor, who has the discretion to work to complete the task

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Often times solutions to such situations require making adjustments to the employment agreement and structuring the job in a way that allows the employee to work on Shabbos. In this instance, the “solution” may be the way we look at the relationship between the owner of the business, Chaim, and his therapists.

The business owner is not involved in determining what happens in the therapy session. The client’s evaluation is performed and the course of treatment is decided by either the therapist and/or the insurance company. In this and other similar situations, the business owner’s job is primarily to act as a *shadchan* or headhunter. He matches therapists, seeking clients, with clients, seeking a therapist. Once the *shidduch* is made, the therapist and client communicate directly and schedule the therapy sessions between themselves without the owner’s involvement. From this perspective, the therapist is an independent contractor who is working for the client rather than for the owner of the business.

One will ask, if the therapist is working for the client, why is the business owner collecting the money from the insurance company and writing a separate check to the therapist as payment for the therapy session? The answer to this is that the owner performs an additional service besides acting as a *shadchan*. The owner also provides bookkeeping/billing services. There are primarily two reasons a therapist works for an agency rather than independently. The first reason is marketing and the second is bookkeeping. A therapist who works independently must find her own clients. Marketing takes time and money. Many therapists will choose to work for an agency who do the marketing and find clients so that the therapist can focus on her area of expertise which is therapy. It is worthwhile paying someone else to find clients and an agency provides that service.

The second reason is that billing insurance is not a simple task. It is tedious and any error could mean hours of time speaking to customer service representatives to fix the error and often results in months passing before the therapist is paid for a session. Hiring an agency to take care of billing and everything else having to do with insurance is another consideration that leads therapists to work for an agency so that they can simply do therapy, and get paid without having to worry about the associated paperwork.

From this perspective, the owner’s relationship with his therapist has two components. He first makes a *shidduch* between the client and the therapist and once that *shidduch* is

whenever he chooses. The therapist that we are discussing has to work according to the client’s schedule and thus is more likely a *sechir yom* according to all opinions.

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made, he does the billing and bookkeeping for the therapist. The owner is not involved in the work of the therapy that the therapist performs, that is the domain of the therapist. The owner's work is clerical.

This perspective addresses and resolves the two issues that we raised at the outset. *Amirah l'akum* is prohibited only when a Jew instructs a gentile to perform *melachah*. In this case, the Jew made a *shidduch* between a therapist and a client but the responsibility for the *melachah*, i.e., the therapy, is between the therapist and the client and the owner is not involved in that at all.

The second issue was that the owner earns \$25 for each therapy session and if sessions occur on Shabbos, the Jewish owner is earning *sechar Shabbos* for that work. That concern assumes that the family is paying Chaim, via the insurance company \$100 an hour per session. What is actually taking place is that the therapist earned \$100 for the session. Since the therapist is not interested in the headache of managing the billing, she is willing to pay the owner \$25 to submit the billing for her. Since the owner does that work during the week, not on Shabbos, the \$25 that he earns from the therapist is earned during the week rather than on Shabbos and thus does not constitute *sechar Shabbos* and is permitted.

Seemingly, this perspective could be used in other industries that follow a similar business model. One where the business owner finds clients for employees and then the owner performs clerical work for the employees so that they get paid.