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HALAKHIC ATTITUDES TOWARD IMMUNIZATION

[ED. NOTE: *The Israeli Medical Association, in conjunction with the Bureau of Attorneys in Tel Aviv and the Israeli Association for Medicine and Law, recently initiated an interdisciplinary project to explore issues of common concern. Towards this end, they established a journal, Piske Din, Refuah uMishpat [Decisions in Medical Law], the first volume of which was published in 1989. Ten court decisions of medically-related cases were presented, each followed by medical, legal, and halakhic perspectives. The following article, taken from that volume, constituted the halakhic analysis of a decision concerning suit for damages resulting from an infant's standard inoculation. It was translated by Pesach Jaffe, a member of the kollel at Yeshivat Merkaz HaRav Kook in Jerusalem.*]

CASE DESCRIPTION

Lee Lifshitz suffers chronically from Lenox Gastaut, an infantile epileptic type disease involving occasional bouts of unconsciousness and sudden increase or loss of muscular tonicity. Her parents claim that the anti-pertussis component in the first two injections of DTP vaccine initiated or aggravated the disease. They sued the State of Israel which operates the *Tipat Halav* children's clinic where the vaccine was injected. Both the parents and the State filed a claim against the *Kupat Holim* (Public Health Group) stating that one of its physicians was negligent in administering the second injection after hearing about the infant's unusual contractions following the first injection. The State and the *Kupat Holim* accused the parents of failing to alert the physician immediately after the strange movements. Both the State and the *Kupat Holim* denied that this, or any vaccination, directly causes disease and thus denied responsibility.

Before we specifically address the case, our discussion will touch on a number of issues: 1. May one expose himself to the dangers of inoculation? 2. Does the state have authority to immunize the populace? 3. Is the physician or health authority obligated to warn the populace of the possible dangers of vaccination? 4. If a direct cause-effect relationship between the injection and the disease has been statistically established, can the physician be held negligent for administering the first injection?

DOUBLE-EDGED SWORD

The halakhic principle forbidding one to place himself in danger¹ is a double-edged sword; it obligates one to actively guard his health,² yet at the same time limits the use of dangerous medications,³ medical experimentation,⁴ and unsubstantiated medical practices.⁵ The law determines that one may place himself in danger to avoid a greater one,⁶ only if the efficacy of the dangerous treatment has been adequately proven.⁷ Rabbi Moshe Feinstein ruled that a dangerous medical practice is permissible only “when the doctors ascertain that at least half of the patients with this disease were cured by this remedy.”⁸

In certain instances one may endanger or even forfeit his life. For example, Rabbi Unterman noted that while no explicit permission is found in the *Mishneh Torah* or *Shulhan Arukh* for one to voluntarily give his life to save the community, nonetheless, he concluded that such action is permissible.⁹ Many have discussed this issue in context of war and concluded that wartime dangers are unlike other dangers; halakhah rules that endangering oneself to fight for Israel is not only permissible, but is a great *mitzvah* and privilege.

The question facing us is: Does the duty to avoid danger obligate administering vaccines that will definitely harm a given percent of the population in order to save the majority from disease; or does this duty forbid use of these vaccines due to the inevitable damage caused to the few?

STATUS OF DANGEROUS REMEDIES¹⁰

Ramban wrote that even conventional medical practices, due to their dual curative and hazardous nature, require the Torah's sanction. The Torah allows a physician to heal because “medicine entails danger; what heals one, kills another”;¹¹ without this explicit permission, endangering oneself to regain health would be forbidden. For this same reason halakhah obligates the physician to carefully weigh the benefits of any procedure against its potential dangers and ascertain that it will not aggravate the

patient's present condition.¹² This is also the root of the halakhic discussion of when it is permissible to endanger a short span of death-threatened life (*hayeh sha'ah*) to attain lasting health (*hayeh olam*).¹³

The authorities disagree whether one may use a remedy which is definitely harmful.¹⁴ The majority permit one to endanger himself even at the definite loss of a limb, and obligate him to do so in order to save his entire body.¹⁵ Rabbi Shlomo Zalman Auerbach permits the administration of morphine and similar pain killing medications to a dying patient (*goses*), even if the physician fears that it may shorten his life; but only if the medication is given to alleviate the pain and his life will not be inevitably shortened by every individual injection, only by their sum total. If a single dose of morphine may inhibit respiration, it may not be injected, even to numb severe pain, unless the patient is dependent upon ventilatory assistance.¹⁶

However, these lenient authorities spoke only of whether to prefer the painful status quo of an already existing disease or a hopefully improved future, but did not relate to preventive medicine. The *poskim* also discuss if one is allowed to avert impending danger defined as *rodef*,¹⁷ but have not written about danger that may possibly appear. In other words, there are no clear-cut sources that permit endangering vigorous health to prevent a possible future illness. Therefore we must clarify if the same criteria for administering dangerous remedies to the already ill patient apply to dangerous vaccines and preventive medicine in general.

VOLUNTARY IMMUNIZATION

It seems to me that an individual may volunteer to be vaccinated, in spite of the possibility of dangerous side effects, for the following reasons:

1. To my mind, the primary reason to permit inoculation is: The danger of contracting the harmful virus if the entire community is not vaccinated also hovers over the head of the unknown victim of immunization. Because the entire population requires inoculation, including the anonymous victims, permission is granted, in accord with the halakhic criteria, to endanger oneself to preserve health.¹⁸ Rabbi Kook in *Mishpat Kohen*, no. 143, used this same reasoning to explain why Pappus and Lulinus (*Ta'anit* 18b) volunteered their lives to save the community, for they were also included in the Roman decree threatening the community.

2. Our Sages used the health-threatening procedure of blood-letting (*Shabbat* 129b; *Nedarim* 54a; *Me'ilah* 20a).¹⁹ Rabbi Yitzhak Lampronti wrote in *Pahad Yitzhak*, letter *mem*, p. 203:

All this (the rabbinic decrees forbidding blood-letting on certain days) applies to blood-letting in the absence of disease (preventive medicine), but when illness is

present the rabbis did not forbid blood-letting and it is permissible to let blood at all times; thus I received from my teachers, the elder rabbis who are also physicians.

It is clear from his words that blood-letting as a preventive measure was permitted on certain days in spite of the attendant danger. From here we see that the potential danger of preventive treatments is ignored for another, more serious danger that may possibly arise.

3. Although halakhah obligates guarding health and prohibits “passing under a slanted wall or walking over a rickety bridge,”²⁰ it nevertheless allows workers to endanger themselves by walking up a high ramp or climbing a tree to harvest its fruit.²¹ Rabbi Moshe Tendler told me in the name of his father-in-law, Rabbi Moshe Feinstein, that the societal behavioral norm determines what is dangerous; whatever the majority does is not considered dangerous. If the Torah permits one to engage in potentially dangerous occupations in order to make a living, because the chances of injury are remote,²² one is certainly allowed to use potentially dangerous preventive measures in order to guard his life from the greater danger of infectious viruses.

4. According to Rambam, who was certainly aware of the potential danger, preventive medicine is on par with conventional medicine. He stresses the importance of preventive measures (*De'ot*, ch.4), but in the following citation from his medical writings he explicitly states the patient's obligation to obey the physician's preventive instructions.

Know, medicine is an indispensable wisdom in every time and place, not only during illness, but also during times of health. . . . If the physician is competent, one should place his soul and body in his care, and direct them according to his instructions. A competent physician is one who knows which diseases should be treated before they worsen. . . . It is proper to follow his instructions in all this.²³

In conclusion: Preventive treatments are in the same halakhic category as all other remedies. Therefore, if my opinion is correct that one need not refrain from exposing oneself to potentially dangerous vaccines, following, of course, the halakhic criteria for standard remedies; then, one is not only permitted, but obligated to be vaccinated in order to preserve his health.

ETHICAL PROBLEMS IN MASS IMMUNIZATION

Is it proper for a government to endanger its citizens by inoculating them with a vaccine proven to produce unavoidable harm or even death in a known percentage (in our case 1:310,000) of the populace? In other words, can the state ignore statistic certainty?²⁴ One reason to permit compulsory immunization and minimize future loss is that as already mentioned, if every individual were to ask if he should be vaccinated, he would receive

an affirmative reply; therefore, even without them asking, the health authorities should reserve the right to inoculate the masses. In addition, if a certain percentage of the populace volunteered to be vaccinated, the probability of the unvaccinated becoming infected is reduced by the "herd effect." Arguments against mandatory immunization are: One soul may not be substituted for another,²⁵ the majority is not a factor in *pikuah nefesh*, and there is no compelling reason to prefer saving the many at the expense of the few.²⁶

Is the authority obligated to warn its citizens of the attendant dangers of the vaccine so that those interested may refrain from inoculation?

If the health authorities determine that immunization is essential to preserve the health of the populace, must the State compensate those disabled by the vaccine? England, for example, instituted the Vaccine Damage Payments Act in 1979, a no-fault compensation plan for those crippled by immunization. Japan also compensates vaccination victims whenever a reasonable link between the vaccination and the damage has been established. As of 1989, the United States is weighing the establishment of a federal no-fault fund or, alternatively, holding the profit-making drug manufacturers liable and have private companies insure them.²⁷ Does halakhah also require such compensation?

Still another question arises with the practitioner. During mass immunization, an individual with unknown sensitivity is injected with, what is, for him, a poisonous substance. The practitioner who administers injurious injections or prickings of the skin is held liable by halakhah for direct injury, his act is not considered an indirect injury possibly free from responsibility.²⁸ The ethical question arises: Is it permissible for the inoculator to directly inject the vaccine into a person who, statistically speaking, will be definitely injured?

DOES THE STATE HAVE AUTHORITY TO IMMUNIZE THE POPULACE?

For the sake of discussion, we will assume that the vaccine is crippling or deadly to a segment of the populace.

Let us begin by defining the concept of collectivity (*kelal*) in the Jewish nation. In his book *Orot*, Rabbi Kook discusses the relation of the individual to the collective.²⁹ If we look at the *kelal* as one organism, every individual member is considered a limb, and as already mentioned, one must endanger a limb to save the organism. This reasoning would obligate the health authorities to endanger part of the populace in order to protect the community. However, the comparison is not exact, for although the collective nation is in fact one organism and its individuals are extremities, nevertheless, every individual who makes up the nation is

a whole world unto himself. We do not have here an individual limb of an organism that may be severed, rather, one organism (*kelal*) against another, and therefore the question of endangering certain individuals remains unanswered.

According to Rambam,³⁰ a group of people "... whom gentiles told: Hand over one of your group so we can kill him, and if you refuse, we will murder all of you, should all die, and not hand over one Jewish soul." We may infer from Rambam's ruling that it is forbidden to mortally endanger one citizen by mass immunization. Even more, Rambam explicitly wrote that if the gentiles singled out one individual to be killed, "They should hand him over instead of all dying," on condition that the individual was already guilty of the death penalty like Sheva ben Bikhri. But anyone who is not like Sheva ben Bikhri, may not be handed over to murderers. Furthermore, who can guarantee that mass immunization will not kill an important figure whom the entire nation needs?³¹

Relevant to our discussion is Hazon Ish's (*Hil. Sanhedrin*, no. 25) uncertainty in the following matter:

One sees an arrow flying to kill many people. He can deflect it to one side where it will kill only one person and thus save the many, but if he does nothing, the many will die and the individual will live. Perhaps this does not resemble 'handing one over to the gentiles to be killed,' for the handing over is a cruel act of murder, an act that does not itself contain an element of saving others, it only indirectly leads to saving them. The saving of others also involves the killing of a Jew, whereas deflecting the arrow is itself a lifesaving act, totally unrelated to the individual standing on the side, for it just happens to be that at that moment a Jew is standing there. Perhaps in such a situation we should try to minimize loss of Jewish life as much as possible.

It seems that the ethical question raised by the Hazon Ish also applies to a situation similar to mass immunization. For example: After the arrow was deflected towards the individual on the side, a second arrow was shot which broke it and then hit the individual. The first arrow is the virus, the second arrow that shatters it, the vaccine. The person hit by the second arrow is one who, without the vaccine may not have been harmed at all, not even by the virus. If we accept the concluding words of the Hazon Ish, then we could say that mass immunization is permissible, "we should try to minimize loss of Jewish life as much as possible."

However, the Hazon Ish remained uncertain and furthermore, the situations are dissimilar. In the case of the arrow, the individual on the side was totally free of danger before the arrow was deflected; whereas during mass inoculation, everyone, including the one harmed by the vaccine, was originally exposed to the same danger of infection.

During the Israeli occupation of Lebanon in 1982, parts of a building several stories high collapsed, trapping many soldiers under the rubble while a small number were marooned on the upper floors. If the rescue

squad first saved those few stranded above, the many buried below would certainly die in the interval. On the other hand, it was possible to mechanically remove the fallen stones and quickly save those below, but this entailed killing the few above. Should they rescue the few above at the cost of letting the many below die or is it preferable to rescue the many trapped below even though the few above will be killed?

My master and teacher, Rabbi Shaul Yisraeli ruled that when both the many and the few are endangered, it is preferable to save the many. But, under no circumstances may an act saving the many be permitted, be they also important figures, if it entails killing, even indirectly, a Jew who would otherwise live.³² It would seem therefore, that mass immunization is permissible, even if someone will be certainly harmed, for it is possible that without the vaccination every individual will be infected. But again, the resemblance is not exact. Rabbi Yisraeli permits abandoning efforts to save the few in order to save the many, but our case is one of actively harming an individual to save the many.

In spite of the abovementioned, it seems that warrant for mass immunization can be found in the laws of war. Among the powers granted to the state is the authority to enlist its citizens to save Israel from enemy attack.³³ There is no apparent reason to distinguish between a physical enemy and an epidemiological one, the term "to save Israel from enemy attack" applies to both.³⁴ Just as the state reserves the right to coerce the nation to fight against a human enemy,³⁵ notwithstanding the loss of life, so too, it may immunize the masses. Because refraining from inoculation may lead to mass infection, it is permissible to theoretically sacrifice the few to immunize the many; the damage is reduced to a minimum at the price of endangering part of the populace.

An additional point: The halakhic norm requires that two simultaneous conditions be met to hold one liable for damage (*garmi*); the damage will inevitably occur and immediately follows the injurious act.³⁶ If one of these conditions is absent, the action is considered indirect (*gramma*) and the assailant exempt from payment. In many cases the vaccine does not directly harm the patient, it affects a mechanism in the body which in turn causes the damage. In these cases the inoculation is an indirect agent, and a statistical doubt concerning an indirect agent is insufficient to detain the state from initiating a worthwhile act of immunizing the community from greater, certain danger. Accordingly, there is no obligation for the authorities to notify the populace of the dangers inherent in every vaccine, either because the state must care for the welfare of its citizens and refrain from panic-provoking actions, or because the community must take advantage of available information and educate itself about possible dangers.

At the same time, the state is obligated to include the attendant dangers of immunization in its educational curriculum of preventive

medicine. However, it seems to me, that if the health authorities are lax in notifying the public, it is only a flaw in their educational responsibility and does not warrant judicial monetary compensation. In certain cases it may even be preferable to conceal information from the public so that people will not refrain from being vaccinated. Consideration should be given to establishing a fund to compensate immunization victims, both to encourage the populace to receive the vaccination and to compensate the victims for the damage indirectly caused them by the authority for the communal benefit; similar to the law of eminent domain.

SUMMARY

The case of Lee Lifshitz focuses on two points: 1. Compensation for damage whose cause is disputed. 2. Immunization in general.

The court ruled that the girl is not entitled to compensation because no definite proof had been offered that the vaccine is directly responsible for her illness. However, in the eyes of halakhah, this is not a reason to exempt the defendants. The words of the judge, "If it were possible to follow the inclinations of the heart, it would be proper to rule in her favor," are appropriate. But, the exemption here is absolute, even if it were proven beyond all doubt that the vaccine directly injured her. Because the injection was mandatory, it is not considered an accidental act (*ones*) requiring compensation,³⁷ rather, it is a totally accidental act (*ones gamur*), free of all obligation.³⁸ The physicians were interested in the girl's welfare, they supervised the procedure to the best of their ability, and the damage was not in the injected limb; therefore, they, and certainly the state, are exempt.

In conclusion: We have discussed the halakhic aspects of the pertussis vaccine, and those like it, and found that immunization is permissible and perhaps, obligatory. Nevertheless, a way should be found to compensate the victims, because of "Do the upright and good."

NOTES

1. *Shulhan Arukh, Hoshen Mishpat (HM)* 427; *Yoreh De'ah (YD)* 116.
2. *Shulhan Arukh, HM* 426; *YD* 116.
3. *Shulhan Arukh, YD* 116; *Arukh HaShulhan, ad. loc.*
4. *Minhat Yitzhak* I, nos. 27–8; VI, no. 99. Dr. A. Avraham, *Nishmat Avraham, YD* 349 (Jerusalem, 1985), p. 266.
5. Dr. Y. Levi, "Bedikot Terufot Hadashot uBa'ayotehah haHilkhatot," *Noam*, vol. 13 (Jerusalem: Makhon Torah Shelemah, 1970), pp. 77–82; Rabbi I. Jakobovitz, "Nisyonot Refuyi'im beGuf heHai," *Assia*, vol. 1 (Jerusalem: Rubin Mass, 1979), pp. 260–2; Rabbi G. Rabinovitz, "Darkhe Refui Bilti Bedukot," *Halakhah uRefuah*, vol. 3 (Jerusalem: Makhon Regenshborg, 1985), p. 115.
6. *Shulhan Arukh, YD* 155:1.
7. *Ahiezer* II, no. 16; *Iggerot Moshe, YD* II, no. 58; *Lev Aryeh* II, no. 35; *Bet Meir, YD* 339. See Rabbi M. Rizal, "Nituah sheHatzlahato Mutelet beSafek," *Assia Emek Halakhah* (Jerusalem:

- Makhon Shlesinger and Keren Emek Halakhah, 1986), p. 118; M. Hershler, "Dine Hatzalah beHoleh," *Halakhah uRefuah*, vol. 3, p. 37.
8. Rabbi M. Feinstein, "Likhpot Terufah al haHoleh," *Halakhah uRefuah*, vol. 4, 1985, p. 111.
 9. *Shevet MiYehudah*, pp. 79–85. See important discussions on this in *Torah sheBe'al Peh*, vol. 14 (Jerusalem: Mossad HaRav Kook, 1972); especially Rabbi S. Refael, "Yahid veTzibur beHatzalat Nefashot," p. 108, and Rabbi S. Rubenstein, "Hatzalat Nefashot al yede Gilui Arayot—beHalakhah," p. 91. Is one obligated to place his life in uncertain danger to save another whose life is mortally threatened? *Kesef Mishneh* on *Rotzeah* 1:14 cites *Hagahot Maimoniot* who requires such action, but *Semah HM* 426 disagrees. See *Radbaz* III, no. 1052, *Peri Megadim OH* 328, *Pithe Teshuvah HM* 426, *Shulhan Arukh HaRav*, part 5, *Hil. Nizke Guf*. Is one obligated to endanger himself to save many from immediate danger, i.e., if water threatens to drown them or they are subject to a master who works them to death? *Ohr Sameah*, *Rotzeah* 7:8 (also *Meshekh Hokhmah* on Ex. 4:19) exempts, but *Keli Hemdah (Parshat Pinhas)* disagrees. Concerning the question of one's obligation to forfeit a limb to save another's life, see *Nishmat Avraham YD* 157, p. 65.
 10. For a summary of the halakhic attitude towards dangerous remedies, see *Nishmat Avraham*, *YD* 155, pp. 44–50.
 11. Ramban, *Torat haAdam, Kitve HaRamban*, vol. 2 (Jerusalem: Mossad HaRav Kook, 1964), p. 43.
 12. *Shevut Ya'akov* III, no. 75, cited in *Pithe Teshuvah*, *YD* 339, letter 1.
 13. *Avodah Zarah* 27b. See *Ahiezer* II, no. 16:6. *Pithe Teshuvah YD* 339, letter 6, defines *hayeh sha'ah* and *hayeh olam*.
 14. Rabbi S. Braun, *She'arim Metzuyanin beHalakhah*, vol. 4 (Jerusalem–N.Y.: Feldheim, 1972), *YD* 190:4. Contrast *Responsa Mor uKetziyah OH* 328 and *Shevut Ya'akov loc. cit.* See, however, *Shevut Ya'akov* I, no. 13. See *Minhat Yitzhak* V, no. 5, letters 4–10.
 15. See commentaries on *Shulhan Arukh HM* 420:31.
 16. See *Nishmat Avraham*, *YD* 339:4, p. 246.
 17. *Minhat Avraham*, no. 42; *Ahiezer* III, no. 72, but *Sered Esh* III, p. 320 disagrees.
 18. See *Tzitz Eliezer*, vol. 15, no. 70 for use of this principal.
 19. The main discussion on the dangers of bloodletting is found in *Shabbat* 129b. See also Rambam, *De'ot* 4:18.
 20. Rambam, *Rotzeah* 12:6. See *Tiferet Yisrael, Berakhot* 1:3, cited in *Pithe Teshuvah HM* 157, letter 3.
 21. *Baba Metzia* 112a. See also our discussion in "Eliezer vs. HaMossad LeBetuah Leumi," *Piske Din, Refuah uMishpat* (Tel Aviv: Vaad Mehoz Tel Aviv–Lishkat Orkhe HaDin BeYisrael, 1989), pp. 121–7.
 22. *Mishpat Kohen*, no. 143.
 23. Rambam, *Ketavim Refu'iyim*, vol. 4, *Sefer HaKatzoret* (Jerusalem: Mossad HaRav Kook), 1965, pp. 110–111.
 24. For a discussion of using statistical data, see Rabbi S. Aviner, *Kelim Statistiyim, Keshet Nehushah, Likutim Mitokh haBiton Kol baRamah, Alon Moshav Keshet shebeRamat haGolan*, Iyar (undated). He concludes that statistical data should be taken into account under certain conditions.
 25. *Ohalot* ch. 7; *Sanhedrin* 72b.
 26. An important discussion of this point is found in *Mishpat Kohen*, nos. 143–4.
 27. For documentation see "Lifshitz vs. Medinat Yisrael," *Piske Din, Refuah uMishpat*, pp. 70–1.
 28. See also our discussion in "Kramer vs. the City of Haifa," *Piske Din, Refuah uMishpat*, pp. 250–6.
 29. Rabbi A. Y. Kook, *Orot* (Jerusalem: Mossad HaRav Kook, 1923), p. 143. *Hatam Sofer YD*, no. 144, emphasizes that these sort of things pertain only to a community in *Eretz Yisrael*.
 30. *Yesode haTorah* 5:5. See *Kesef Mishneh ad. loc.* Rambam ruled like Resh Lakish instead of Rabbi Yohanan (*TJ Terumot* ch. 8) but Meiri on *Sanhedrin* 74a disagrees and ruled like Rabbi Yohanan. Nevertheless, Meiri does not permit handing one over directly to death. See also Rashi on *San.* 74a.
 31. See Rabbi S. Dichowsky, "Kedimiot beHatzalah," *Dine Israel*, vol. 7 (Tel Aviv: Tel Aviv University, Faculty of Law, 1976), pp. 45–66.
 32. Rabbi S. Yisraeli, "Hatzalat Rabim mul Me'atim beHitmotetut Binyan," *Tehumin*, vol. 4 (Alon Shevut: Tzomet, 1983), pp. 137–143. See also his article, "Mitzvat Kidush haShem beShalosh Averot haHamurot," in *Torah sheBe'al Peh*, vol. 14, pp. 72–8.
 33. Rambam, *Melakhim* 5:1.

34. See Rabbi Y. Gershuni, *Mishpat haMelukhah* (N.Y., 1950), pp. 356 ff., who disagrees with some of the later authorities who feel that Rambam differentiates between *ones* and medical considerations. It remains to be clarified if “saving Israel from enemy attack” is a consequence of preventing desecration of His Name brought by the attempt to harm Jews, “saving Israel,” and not a consequence of *pekuah nefesh*.
35. Rambam, *Melakhim* 5:2.
36. Rosh on *Baba Kama* ch. 9, letter 13; *Pilpulah Hariftah*, *ad. loc.*, letter 70; *Baba Batra*, ch. 2, letter 17; *Sanhedrin* ch. 9, letter 2; *HaRashdam HM* no. 332; *Masat Binyamin* no. 28.
37. *Shulhan Arukh HM* 421:3.
38. This is not *ones* “similar to *avedah*, close to negligence,” for which one is liable, but *ones* similar to *genevah*, *ones gamur*, for the physicians did all they could. See *Baba Kama* 27b, Tosafot, s.v. *uShmuel*; *Shulhan Arukh HM* 421:4 in combination with *Remah, HM* 378:1.