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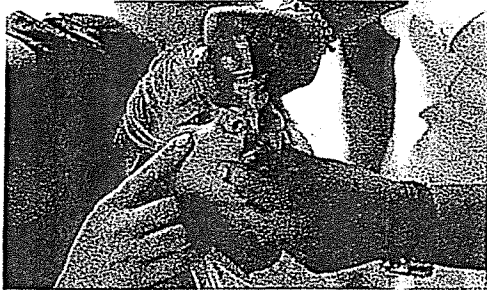
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# THE JERUSALEM POST



polio vaccine illustrative 370. (Photo by: REUTERS/Oswaldo Rivas)

## Does Jewish law mandate vaccinations?

By SHLOMO  
BRODY  
09/19/2013

The Torah commands us not to stand idly over someone else's blood, thereby imposing a responsibility to care for others.

Since February, health officials have found strains of the polio virus in many parts of Israel and identified a couple of dozen carriers of the virus. To prevent an outbreak, Israel launched a nationwide campaign to vaccinate all children under the age of nine, raising the question of whether Halacha mandates participation in this effort.

This question partly relates to the obligation to administer preventive medicine. The Torah promises that God will protect those who observe the commandments with complete fidelity.

Yet Jewish sources have long recognized that no one can remain assured that they are worthy of such providential protection, or rely on miracles to save them. The Torah commands, "Be careful and watch yourselves," which was understood as a directive to avoid dangerous situations and activities. Jewish law requires us to remove dangerous objects from our environs, ranging from shoddy ladders to dangerous dogs to unprotected weapons.

The spirit of these norms derives from the biblical obligation to place a guard railing around one's roof. Both Maimonides and Rabbi Yosef Karo list prohibited activities within their legal codes, with Rabbi Moshe Isserles further adding that "one should avoid all things which endanger oneself, as we treat physical dangers more stringently than ritual prohibitions."

The question remains how proactive a person must be to avoid such scenarios. Generally speaking, Jewish law asserts that one may undertake certain risks that most humans accept with equanimity. We ski, drive cars and undergo elective surgery even as all those activities entail certain risks. Yet in the case of vaccinations, one must also note that the goal is to protect not only oneself but the entire community, the nation – and even the world. Anyone familiar with the history of smallpox or rubella knows the terrifying horrors that they cause.

The Torah commands us not to stand idly over someone else's blood, thereby imposing a responsibility to care for others.

In the late 18th century, doctors attempted to prevent the continued onslaught from smallpox by inoculating healthy people with a low grade of fluid taken from stricken patients.

The hope was that a mild, controlled dose would allow the body to protect itself from a wild, spontaneous outbreak, even as this imposed a risky level of exposure. As David Ruderman has documented, Rabbi Abraham Nansich, himself mourning the death of two children, published a pamphlet in 1785 urging Jews to participate in this initiative. While one might not normally permit such risky inoculations, he argued that all humans are at greater danger from a deadly outbreak, and therefore everyone must accept the risks imposed by inoculation.

Edward Jenner's invention of a safer smallpox vaccine at the turn of the 19th century was celebrated by scholars like rabbis Israel Lifshitz and Eliezer Fleckele, who strongly advocated vaccination and noted that this was a far superior alternative to the solution mentioned in earlier halachic literature: to flee town. When vaccinations were only available for a limited time in one's area, many scholars allowed people to desecrate Shabbat to receive the treatment.

Vaccinations are undoubtedly one of the greater inventions of the modern era and have saved countless lives. This blessing sometimes leads to complacency, as some individuals become immune to the phenomenon of mass outbreaks and plagues. Others fear immunizing their families because of the minimal risks associated with vaccines. In effect if not in intent, they rely upon the so-called "herd immunity" that occurs when most other people get vaccinated, thereby reducing the chance of contagion.

Public health officials have strongly countered that vaccines present minimal risks (especially relative to other health-care procedures) and that many of the sensationalistic claims linking vaccines to autism and other terrible side effects have been scientifically refuted. Furthermore, we must reserve the protections of herd immunity for those who cannot get vaccinated because of weaker immune systems. Nonetheless, certain people around the world continue to avoid vaccinations, including limited elements of ultra-Orthodox communities in America who have recently experienced tragic outbreaks of mumps and measles.

As Rabbi Asher Bush has noted, Rabbi Yosef Shalom Elyashiv argued that given the widespread contemporary medical consensus, parents are obligated to vaccinate their children, and schools or camps may exclude those who fail to take those preventive measures. Many Jewish decisors including Rabbi Yehoshua Neuwirth argued that in the absence of an outbreak or national legal mandate, schools should strongly encourage but cannot force the vaccination of children, even as their parents remain negligent, since Jewish law decidedly supports vaccination. This follows the health policies of many countries, which allow conscientious objectors to avoid vaccinations.

Be that as it may, all scholars agree that the effort to prevent the return of polio is a national mission. We must support the call of Israel's chief rabbis who declared that Jewish law mandates all children to be vaccinated in accordance with Health Ministry regulations. ■

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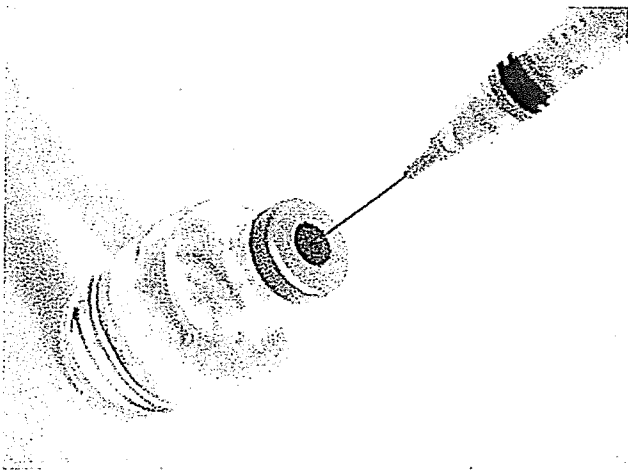
It has come to our attention that a full pasuk was printed on page 105 of the summer 2018 issue, rendering that page shaimos (genizah). Please consider this page as shaimos and treat accordingly.



JEWISH LAW

# Halachic Aspects of Vaccination

EDWARD REICHMAN



*Photo: Brian Hoskins*

Perhaps it is because we live in twenty-first century America, a country largely immune from true epidemics, that we take vaccination for granted and some parents even consider not vaccinating their children. A Jew living in the eighteenth century would have longed for respite from the relentless onslaught of diseases, and could only have dreamed of having a way to prevent them. The thought of refusing vaccinations would never have entered his mind. Unfortunately, nowadays, as a result of misleading information, some parents are confused about the issue and do not realize the importance of vaccinations. A cursory review of the origins of vaccination in medical and rabbinical literature may provide some perspective on the issue.

In the late eighteenth century, smallpox decimated the population of Europe. Millions of people died from the disease, and a high percentage of children were afflicted. In the eighteenth century alone, an estimated 400,000 Europeans died each year. When potential relief from the

horrors of the disease came on the horizon, there must have been unabashed excitement. The cure, or, more accurately, the mechanism of disease prevention, however, was unique in the history of medicine: it required exposing healthy individuals to disease, hopefully a mild form, in order to prevent the development of a more serious disease. The procedure involved the removal of fluid from the pox of an afflicted patient, and the subsequent injection of that virulent fluid into the body of a healthy individual. Scientists believed that the healthy person injected with the fluid would develop a mild, non-fatal form of smallpox, and would therefore be spared the likelihood of fatality if later exposed to the spontaneous form. This was indeed the case the majority of the time, but the procedure was not without risk; some of those inoculated developed the severe form of the disease, and died as a result (an estimated 0.5 to 2 percent). In fact, there is a tombstone in Long Island, New York, with the following epitaph:

In Memory of Peleg,

Son of Thomas and Mary Conklin, who died of the smallpox inoculation

Jan. 27th, 1788, aged 17 years

In 1785, Rabbi Avraham ben Shlomo Nansich published a small pamphlet entitled "Aleh Terufah," detailing the tragic loss of two of his children to smallpox and beseeching the rabbis of his generation to allow inoculation.

However, the treatment was considered controversial at the time, as never in the history of mankind had one taken a healthy individual and injected him with the very cause of an illness, even if the objective was to prevent a more severe disease. This unique treatment posed a dilemma for the Torah-observant Jew. The Torah gives license to the physician to heal the sick, but does it give him license to bestow illness upon the healthy, albeit for an ultimate cure? The debate about the medical and theological aspects of smallpox inoculation occupied a significant chapter in eighteenth- and nineteenth-century history.

Rabbis of that time debated the issues and were well aware of the risks associated with vaccination. Rabbi Israel Lifschutz, author of the Tiferet Yisrael commentary on the Mishnah, argued in favor of inoculation despite its known risks. In his view, the benefits clearly exceeded the risks. Other prominent rabbis advocated vaccination as well, including Rabbi Mordechai Banet (1753-1829), Rabbi Eliezer Fleckeles (1754-1826) and Rabbi Ishmael HaKohen (1723-1811).

An additional halachic issue arose with regard to the practical dissemination of the inoculation. In the early days of inoculation, the injections were performed by barber-surgeons, who traveled from town to town. They often spent only a few hours in each location. The question therefore arose as to whether one could receive the inoculation on Shabbat, if that happened to be the only time it was offered. The halachic discussions touched on two issues. The first issue related to the exact nature of the prohibition associated with the injection. Halachic distinctions were drawn between injections made under the skin (subcutaneous), as opposed to those made directly into the vein (intravenous). The second, more fundamental, issue was the determination of the halachic status of the healthy patient receiving the injection. The

violation of Shabbat is permitted only for patients who are technically considered ill, and the level of violation allowed is commensurate with the severity of the illness. While patients in need of receiving inoculation are not technically ill, the debate was whether they should nonetheless be considered in the halachic category of a “choleh she’ain bo sakanah” (one experiencing a non-life-threatening illness), by virtue of their presence in an endemic area of life-threatening disease (see, for example, Teshuvah Meahavah 1:134; Zecher Yehosaf, OC 104; Shu”t Vela’asher Amar 15). This categorization of the patient would allow the violation of some prohibitions in the provision of treatment. If the patient receiving the inoculation was not ascribed this status, no Shabbat violation would be permitted. After much deliberation, a number of posekim allowed the inoculation of healthy individuals on Shabbat, which entailed possible Shabbat violation, in order to protect them from exposure to smallpox.

The Torah gives license to the physician to heal the sick, but does it give him license to bestow illness upon the healthy, albeit for an ultimate cure?

The more crude inoculation for smallpox was soon replaced with the scientifically tested vaccination of Edward Jenner, which inoculated patients with the cowpox virus in order to protect them from smallpox. More than 200 years have passed since Jenner’s discovery, and the effectiveness of vaccination is now beyond question. In fact, the discovery of vaccination

is on virtually every top ten list of the greatest discoveries in the history of medicine, appearing as number one on many of them. While there is no way to know how many lives have been saved globally as a result of vaccinations for diseases such as smallpox, diphtheria, measles, polio, pneumococcus and influenza, tens of millions would be a very conservative estimate. Indeed, smallpox, the first disease for which vaccination was used, has been virtually eradicated from the face of the earth.

However, while the side effects of vaccinations—including death—are rare, they are also well documented. Despite these foreseen consequences, scientific research has proven that the risk-benefit analysis weighs very heavily in favor of vaccination. The side effects must be viewed in the context of general medical practice. The issue of assuming risk and self-endangerment is the substance of many halachic discussions, but the assumption of some risk in the pursuit of medical treatment is an accepted fact. There is arguably not a single form of treatment, from Tylenol to chemotherapy, which is free of side effects—many of them serious. Yet the obligation to seek a cure and prevent disease remains in full force, despite the risks. To be sure, each treatment requires its own risk-benefit statistical analysis.

Anecdotal accounts of vaccinations leading to other conditions, such as autism, do exist. But these are not well-documented, scientifically proven side effects. To date, these claims have not been substantiated by rigorous scientific study. In 2004, the Institute of Medicine performed a thorough study on the hypothesis that vaccines, and, in particular, the mercury they contained, were causally related to autism. Its published findings, entitled “Immunization

Safety Review: Vaccines and Autism,” concluded that the body of epidemiological evidence rejects a causal relationship between mercurial-containing vaccines and autism. The web site of the Centers for Disease Control and Prevention (CDC) states, “Carefully performed scientific studies have found no relationship between MMR [measles, mumps and rubella] vaccine and autism.” Time Magazine recently devoted its cover story to addressing the autism concern, and reached the same conclusion (“How Safe Are Vaccines?” by Alice Park, June 2, 2008).

Furthermore, unvaccinated individuals expose themselves to additional risk for vaccine-associated diseases. It is often claimed, however, that their risk is low due to herd immunity, a type of immunity that occurs when the vaccination of a large portion of a population (or herd) provides protection to unvaccinated individuals. Herd immunity theory proposes that, in diseases passed from person to person, it is more difficult to maintain a chain of infection when large numbers of a population are immune. The more immune individuals present in a population, the lower the likelihood that a susceptible person will come into contact with someone who is infected. Thus, since most of the people in a community are vaccinated against diseases, it is less likely that viruses or bacteria will flourish there and therefore less likely for an unvaccinated individual to contract these diseases. While this argument is not without merit, the fewer people who get vaccinated, the less protective herd immunity will be.

However, there is another factor to consider. Even among those who are vaccinated, small percentages do not achieve immunity. So if unvaccinated individuals contract a disease, they can spread it to this population. Furthermore, if the number of unvaccinated individuals rises, the possibility of epidemic outbreaks exists—reminiscent of the pre-Jenner days. The recent outbreaks of measles attest to this fact. From January 1, 2008 through April 25, 2008, the CDC received a total of sixty-four reports of confirmed measles cases in nine states, the highest number for the same time period since 2001. Of the sixty-four people infected by the measles virus, only one had documentation of prior vaccination. Many of the cases occurred in children who were too young to be vaccinated or whose parents claimed exemption from vaccination due to religious or personal beliefs.<sup>1</sup> One particular case affected the Jewish community in Cedarhurst, New York, just a few blocks from my home.<sup>2</sup>

Therefore, it is not only a personal decision to refuse vaccination; it is a decision that affects the entire community. It is thus within the Jewish community’s rights to mandate vaccination, for example, as a prerequisite for day school admission.

One might argue that the assumption of risk for treatment of an existing medical condition is different from assuming risk for preventative care, but even preventative care is considered a mitzvah. When global epidemics of infectious disease were more prevalent, posekim were more willing to allow vaccination on Shabbat. But even today, in unique circumstances, posekim have permitted the violation of Shabbat for the preventative procedure of vaccination. For example, Rabbi Shlomo Zalman Auerbach allowed vaccination on Shabbat in the following limited scenario: If one did not receive the vaccination on Shabbat, and it would be a number of

years before he would have that opportunity again.<sup>3</sup> Rabbi Eliezer Waldenberg permitted a vaccine for tetanus to be given on Shabbat.<sup>4</sup> While these cases are limited, they reflect the fact that posekim regarded vaccination, though a preventative measure, as enough of an obligation to consider violating Shabbat.

In the exceedingly rare cases of fatality possibly associated with vaccination, posekim have addressed the issue of the permissibility of autopsies in order to clarify the cause of death and to perhaps prevent other deaths. Rabbi Dr. Mordechai Halperin, the director of The Dr. Falk Schlesinger Institute for Medical-Halachic Research in Jerusalem and the chief officer of medical ethics for the Israeli Ministry of Health, recounts a 1992 case of an infant in Israel who died shortly after receiving a hepatitis vaccination. The Israeli Ministry of Health requested an autopsy of the infant, and Rabbi Halperin discussed the halachot of the case with Rabbi Auerbach, who “gave an unambiguous decision that the postmortem should be carried out on account of the dangers although, and he stressed this, it was clear to him that the danger was remote.”<sup>5</sup> However, Rabbi Yosef Shalom Elyashiv prohibited an autopsy in a similar case involving an infant who died after receiving a vaccination. He made his decision partly because the odds of the death being a result of the vaccine were small, coupled with the fact that it was unlikely that the autopsy would produce useful results.<sup>6</sup>

To be sure, there are certain patients for whom vaccinations are medically inadvisable, but such cases are exceptions and each should be discussed individually with a physician. To forgo vaccination purely because of anecdotal claims is halachically irresponsible.

Our success with vaccinations is the cause for our complacency. We in the twenty-first century have forgotten what the lives of our ancestors were like—filled with sadness for the children afflicted with paralysis from polio and with mourning for children dying of smallpox and measles. These occurrences are, fortunately, a thing of the past, due largely to the success of vaccination. May Hashem allow us to continue our success in the battle against infectious diseases.

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## Notes

1. Information from <http://www.cdc.gov/Features/MeaslesUpdate/>
2. “Health Officials Issue Measles Advisories in New York City, Long Island,” Associated Press, 8 April 2008, accessed at [http://www.nydailynews.com/ny\\_local/2008/04/08/2008-04-08\\_health\\_officials\\_issue\\_measles\\_advisorie.html](http://www.nydailynews.com/ny_local/2008/04/08/2008-04-08_health_officials_issue_measles_advisorie.html)
3. Minchat Shlomo 2:29, letter dalet; Shemirat Shabbat Kehilchatah, chap. 32, n. 2
4. “Vaccination for Tetanus on Shabbat” (Hebrew), Halachah U’Refuah 4 (Regensburg Institute,

HM 427:8.2005  
Compulsory Immunization in Jewish Day Schools

Rabbi Joseph H. Prouser

*This paper was accepted by the Committee on Jewish Law and Standards on December 7, 2005, by a vote of twenty in favor and one abstaining (20-0-1). Voting in favor: Rabbis Kassel Abelson, Elliot Dorff, Philip Scheim, Mayer Rabinowitz, Daniel Nevins, Alan Lucas, Leonard Levy, Joel Roth, Paul Plotkin, Myron Geller, Pamela Barmash, Gordon Tucker, Avram Reisner, Susan Grossman, Jerome Epstein, Paul Schneider, Joseph Prouser, Aaron Mackler, Robert Fine, BenZion Bergman. Abstaining: Rabbi Myron Fenster.*

**She'eilah:**

Our colleague, Rabbi Robert Abramson, Director of the Department of Education of the United Synagogue of Conservative Judaism, and Dr. Elaine R. S. Cohen, Associate Director, on behalf of the Solomon Schechter Day School Association, ask "whether a Solomon Schechter Day School may grant an exemption on Jewish religious grounds for a child whose parents refuse to permit immunizations." Is there a basis in Halakhah to support a parent's request for a religious exemption from state mandated immunizations?

**Teshuvah:**

The Book of Proverbs 23:12-13 offers sage counsel to parents regarding the well-being of their children: *הביאה למוסר לבך ואזנך לאמרי-דעת: אל תמנע מנער מוסר* -- "Devote your heart to instruction, your ears to words of knowledge: Do not withhold corrective measures from your child." Both Gersonides and Ibn Ezra emphasize that this verse demands of parents both principled maintenance of their children's spiritual condition and vigilant care of their physical health and safety. *תשמרנו שלא ימות מיתת הגוף בלא ימיו* -- "Protect your child, that he not suffer physical death prematurely, and so that the part of him which allows him to attain eternal life not die."<sup>1</sup> Similarly, *תציל שלא ימות הנפש במיתת הגוף או תציל שלא ימות טרם עתו* -- "Intervene so that the soul not die with the death of the body, and intervene so that your child not die before the appointed time."<sup>2</sup>

The requirement of parental responsibility for a child's religious development and physical safety, affirmed by Proverbs and its commentaries, finds explicit halachic expression. *האב חייב בבנו למולו ולפדותו וללמדו תורה ולהשיאו אשה וללמדו אומנות*. וי"א אף -- "A father's obligations to his son are to circumcise him, to redeem him, to teach him Torah, to see to his marriage, and to teach him a trade. Some say also, to teach him to swim."<sup>3</sup>

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1 Gersonides (Ralbag) on Proverbs 23:13.

2 Ibn Ezra, ad loc.

3 BT *Kiddushin* 29A.



The “dual curriculum” here prescribed, comprising a religious education (ללמוד תורה) as well as knowledge necessary to securing a livelihood (ללמוד אומנות), anticipates the goals of the modern Jewish Day School. The added requirement of swimming lessons (להשיטו במים) speaks to the duty of parents to take appropriate steps to obviate foreseeable dangers to their children. שמה יפרוש בספינה ותטבע ויסתכן אם אין יודע לשוט -- “Perhaps he will travel by ship and, should it founder, he will come to danger if he does not know how to swim.”<sup>4</sup>

The obligation of a parent to provide for the physical needs of minor children<sup>5</sup> is determined כפי צרכן בלבד -- “strictly on the basis of the children’s needs,” not the means or discretion of the parent.<sup>6</sup> Implicit among the halachic obligations of parent to child is the duty to “watch carefully over his health. Protect him as far as lies in human power from sickness and deformity.”<sup>7</sup>

Today, the potential threats to a child’s health and safety which a parent can reasonably be expected to anticipate -- and for which effective protective measures are readily available -- are numerous, well-known, and constitute a more present danger than the theoretical perils of future sea travel. As with children’s religious and general studies, professional educators may need to play a decisive role in addressing these dangers.

### **I. Childhood Disease and State Mandated Immunization**

“Infants immunized according to the current consensus guidelines have received up to 18 separate injections for protection against 12 different infectious diseases by the time they reach two years of age.”<sup>8</sup> A combination vaccine, Pediarix, developed in 2003, immunizes simultaneously against diphtheria, tetanus, pertussis, polio, and hepatitis-B, eliminating as many as six of these injections.<sup>9</sup> Vaccines, administered for the prevention of infectious diseases, are a suspension either of killed micro-organisms (bacteria, viruses, rickettsiae, or their derivatives), or of live micro-organisms which are “attenuated” or weakened, “leading to loss of their virulence but retention of their ability to induce protective immunity.”<sup>10</sup> Because of their success in eradicating smallpox and dramatically reducing the incidence of other once common diseases such as measles, diphtheria, mumps, and polio, “the Centers for Disease Control and Prevention (CDC) lists vaccination practices among the top 10 public health achievements of the 20th

4 Rashi, ad loc.

5 *Shulchan Aruch, Even ha-Ezer* 71:1, 73:6.

6 For a related discussion of parental care as a function of natural law, see Shoshana Matzner-Bekerman, *The Jewish Child: Halakhic Perspectives* (KTAV/New York, 1984), pp. 141-145. See also *Shulchan Aruch, Even ha-Ezer* 71:1.

7 Rabbi Samson Raphael Hirsch, *Horeb* (Soncino Press/New York, 1962), #550.

8 Lynne L. Levitsky, M.D., “Childhood Immunizations and Chronic Illness,” *New England Journal of Medicine*, 350:14, April 1, 2004, p. 1381.

9 Thank you to pediatrician Gary S. Mirkin, M.D. for this information, and for his assistance in identifying many of the medical references in this study.

10 W.A. Newman Dorland, *Dorland’s Illustrated Medical Dictionary* (W.B. Saunders, Co., 2000).

"Jewish tradition would define immunization as part of the *mitzvah* of healing and recognize it as a required measure, since we are not entitled to endanger ourselves or the children for whom we are responsible... There are no valid Jewish religious grounds to support the refusal to immunize as a general principle."<sup>90</sup>

Noteworthy is the concurring opinion of a leading Orthodox body, submitted as an *amicus curiae* brief to the Supreme Court of the United States:

"Agudath Israel takes both moral and legal exception to the notion that a person enjoys unfettered personal autonomy... Society has the right to compel citizens to submit to vaccination... to insist that a child receive life-sustaining treatment even over the religiously motivated opposition of his parents."<sup>91</sup>

Rabbi Hershel Schachter, Rosh Yeshiva of Yeshiva University's Rabbi Isaac Elchanan Theological Seminary, has asserted that "where vaccines are mandated by the state, such as in the case of immunizations before entering school, one would be obligated to be immunized based on the concept of *Dina d'Malchuta Dina* [the law of the land is the law]."<sup>92</sup>

Rabbi Shlomo Zalman Auerbach, until his death in 1995 the dean of Orthodox Israeli poskim, ruled that it is permissible to set aside Shabbat in order to receive an immunization, if foregoing the Sabbath opportunity would necessitate an unacceptable delay,<sup>93</sup> thus creating a potentially life-threatening situation.<sup>94</sup>

Our colleague, Rabbi Elliot N. Dorff, concludes that the parental obligation to secure children's immunization against infectious disease is unambiguous:

"It would be a violation of Jewish law... for a Jew to refuse to be inoculated against a disease, at least where the inoculation has a proven track record of effectiveness. Jews, to the contrary, have a positive duty to have themselves and their children inoculated against all diseases where the preventive measure is effective and available."<sup>95</sup>

The positive disposition of rabbinic literature and halachic decisors toward immunization -- a pattern sustained as technology and medical science were refined over three centuries -- reflects our tradition's well established preference for preventive

90 C.C.A.R. Responsa 5759.10, "Compulsory Immunization."

91 In "Jewish Law: Legal Briefs," *Vacco v. Quill*, 1996. See <http://www.jlaw.com/Briefs/vacco6.html>

92 See J. DiPoce, M.D. and Rabbi S. Buchbinder, M.D., "Preventive Medicine," *Journal of Halacha and Contemporary Society*, No. XLII, Fall 2001, p. 99, citing personal communications.

93 A delay of "four or five years."

94 Responsa *Minchat Shlomo*, Vol. II, 29:4. In an analogous ruling of broader and more pressing practical application, Chief Rabbi Yisrael Lau instructed Israelis to leave a radio turned on over Shabbat when, during the Persian Gulf War, the late regime of Saddam Hussein threatened attack with biological weapons. This preventive measure would have allowed timely communication of emergency instructions should such an attack have occurred. See also "Preparing for a State of Emergency" (Israel Ministry of Foreign Affairs, 2003) for more on immunization programs in anticipation of non-conventional warfare.

95 Rabbi Elliot N. Dorff, *Matters of Life and Death: A Jewish Approach to Modern Medical Ethics* (J.P.S., 1998), p. 253.

medicine as a religious mandate. "The wide acceptance of vaccinations and the protection against illness that they afford, even in the face of small actual risk for acquiring disease, would seem to give them the status of a mitzvah."<sup>96</sup>

#### **IV. The Obligation of Preventive Health Care**

Maimonides explores the halachic duty of healthy living in considerable detail. While as a physician Rambam had a special obligation to heal the sick and to treat illness, his emphasis as a codifier of Jewish law was on prevention: צריך שירחיק אדם עצמו מדברים -- המאבדן את הגוף ולהנהיג עצמו בדברים המברין והמחלימים "One must avoid those things which have a deleterious effect on the body, and accustom oneself to things which heal and fortify it."<sup>97</sup>

Rabbi Elliot N. Dorff speculates as to the varied motivations behind preventive health care: "The fact that in practice we can prevent disease more easily than we can cure it... is not the whole story; we must prefer prevention to cure also in order to ward off the debilitating and degrading aspects of disease."<sup>98</sup>

Among the many specific applications of this principle, Maimonides includes required measures intended to minimize exposure to infectious disease. His rulings are repeated and codified by the Shulchan Aruch: צריך לזוהר מליתן מעות בפיו שמא יש עליהן רוק יבש של -- מוכי שחין ולא יתן פס ידו תחת שחיו שמא נגע ידו במצורע "One must be careful not to put coins in one's mouth lest they carry the dried saliva of one suffering from a skin disease; and one should not put his hand under his arm, lest his hand had come in contact with a leper..."<sup>99</sup>

To this, Rabbi Moses Isserles (Rema) glosses: וכן יזהר מכל דברים המביאים לידי סכנה כי -- סכנתא חמירא מאיסורא ויש לחוש יותר לספק סכנה מלספק איסור "One must exercise caution with anything that is dangerous, because we treat a danger more stringently than a matter forbidden as a matter of ritual law. One should be more concerned about a possible danger than with a doubtful case of ritual law."<sup>100</sup> The Rema discusses an additional, specific case of danger to health with direct application to the question of immunization:

יש לברוח מן העיר כשהדבר בעיר ויש לצאת בתחילת הדבר ולא בסופו וכל אלו הדברים הם משום סכנה ושומר נפשו ירחק מהם ואסור לסמוך אנס או לסכן נפשו בכל היוצא בזה.

"One must flee a city in which there is a plague, and one must leave at the onset of the plague and not toward its end. All these cases are because of danger, and one who dutifully cares for his life will distance himself from them. It is forbidden to rely on a miracle, thereby endangering oneself in such cases."<sup>101</sup>

<sup>96</sup> DiPoce & Buchbinder, Op Cit., p. 96.

<sup>97</sup> Maimonides, *Mishneh Torah*, *Hilchot De'ot* 4:1.

<sup>98</sup> Dorff, Op Cit., pp. 245-246.

<sup>99</sup> *Shulchan Aruch*, *Yoreh De'ah* 116:5.

<sup>100</sup> Rema ad loc., citing BT *Chullin* 10A.

<sup>101</sup> Ibid.

Isserles took his own counsel when, in the days leading up to Purim of 1557, he fled a cholera epidemic in Cracow. Distressed that he was consequently unable properly to fulfill the mitzvah of *mishloach manot*, he composed his commentary on Esther, *Mechir Yayin*, during his temporary exile, sending it, instead of portions of food, to his revered father,<sup>102</sup> Yisrael (Isserl) ben Yosef.

Karo elsewhere contemplates further, proactive measures to be undertaken in response to the spread of various infectious diseases.

וכן מתענים על החולאים. כיצד, הרי שירד חולי אחת לאנשים הרבה באותה העיר כגון אסכרה או חרחור וכיוצא בהם והיו מתים מאותו חולי הרי זה צרת צבור וגוזרין עליה תענית ומתריעין וכן חכוך לח הרי הוא כשחין פורח ואם פשט ברוב הצבור מתענין ומתריעין עליו אבל חכוך יבש צועקים עליו בלבד.

“We fast in response to epidemics. How so? If a given disease<sup>103</sup> has spread to many people in the same city<sup>104</sup> (for example: diphtheria,<sup>105</sup> violent fever,<sup>106</sup> and so forth), if there have been fatalities, this constitutes a communal crisis. A fast is decreed and the shofar is sounded.<sup>107</sup> So, too, for smallpox<sup>108</sup> -- which is an outbreak of pustules -- if it

102 See Asher Ziv, *Ha-Rema: Rabbi Moshe Isserles* (Mossad Ha-Rav Kook, Jerusalem, 1957), p. 42 [Hebrew].

103 Translating these references to specific infectious diseases involves a measure of conjecture. The literary and medical evidence suggests the translations provided. If identification of the afflictions indicated is subject to medical debate, the halachic principles under discussion nevertheless apply by extension to the conditions named, providing direct precedents for appropriate treatment and response.

104 In addition to responding to local outbreaks, BT *Taanit* 21A presciently anticipates contemporary epidemiological concerns by prescribing fasts when disease strikes even a distant city, linked to a community by caravan or trade routes. Fasts are similarly observed when disease spreads among livestock (מִוֶּתְנָא בְּחִזְרִי) from which cross-species transmission is considered likely. For a lengthy discussion of the analogous avian flu (as, too, the swine flu), see Mike Davis, *The Monster at Our Door* (The New Press/New York, 2005).

105 אסכרה -- Julius Preuss devotes an entire chapter of *Biblical and Talmudic Medicine* to this condition: “Of all the illnesses known to us, this description only fits diphtheria and especially diphtheritic croup” (p. 157). BT *Berachot* 8A singles out אסכרה as the harshest among 930 known types of death. There, Rashi translates אסכרה into Old French: “*estrangulement*,” which supports identification as diphtheria, which involves a frequently life-threatening constriction of the throat and air passages. (Rema thus links אסכרה etymologically to Genesis 8:2, וַיִּסְכְּרוּ מַעֲיֵנֵי תְהוֹם -- “The fountains of the deep were stopped up.”) In his notes to BT *Taanit* 19B, Rabbi Adin Steinsaltz explicitly identifies אסכרה as diphtheria. See also BT *Taanit* 27B, which identifies אסכרה as a childhood disease. Rashi (ad loc. and on Genesis 1:14) links prayer and fasting customarily aimed at preventing this disease to the specific language of the Creation narrative, suggesting that recourse to available prophylaxis -- especially on behalf of our children -- is a function of the laws of nature, a principle woven into the very fabric of Creation. I.L. Katzenelsohn, *Ha-Talmud v’Chochmat Ha-Refuah* (Berlin, 1918), p. 384 [Hebrew], identifies אסכרה as a cognate of “*Eschura*” (more familiarly, “*eschar*,” “*eschara*” and “*escharotic*”), a thick scab formed from dried, bloody tissue, and analogous to the thick, constricting membrane characteristic of diphtheria.

106 חרחור -- This term appears in Deuteronomy 28:22. In his JPS Torah Commentary, our colleague, Prof. Jeffrey Tigay, states: “It is not certain whether the noun refers to an affliction of humans or vegetation” (ad loc.). In our text, clearly the former is intended. Everett Fox renders the Biblical term “violent fever.” In the context of our discussion, Karo likely refers to typhoid or scarlet fever. The use of the generic “violent fever” may well encompass these and other conditions (yellow and spotted fever).

107 See Numbers 10:9. The Shofar is presumably used both to elicit divine mercy and to alert the public.

spreads to most of the community, we fast<sup>109</sup> and sound the shofar. But for measles,<sup>110</sup> we merely beseech God in prayer.”<sup>111</sup>

The Rema emphasizes the required response to such diseases is not to be delayed until the health crisis intensifies: ובאלו חולאים אינן צריכים שימותו בשלשה ימים זה אחר זה... אלא -- “With these diseases, we do not require that fatalities occur on three consecutive days (as a condition for communal action)... Rather, we fast and issue warnings immediately.”<sup>112</sup>

*Be'er Hetev*<sup>113</sup> explicitly extends these principles to childhood disease: אבעבועות פורחות בתינוקות. Similarly, *Magen Avraham*,<sup>114</sup> citing *Shnei Luchot ha-Brit* (the “*Shelah*”),<sup>115</sup> earlier ruled: דכל אחד יבריה בניו מן העיר בעת הזאת ואם לא עשו זאת הן חייבין -- “Everyone must evacuate their children from the city at such a time (of epidemic), and if they do not do so, they are culpable for their deaths.”<sup>116</sup>

The late British Chief Rabbi and pioneering medical ethicist, Lord Immanuel Jakobovitz, explains the phrase בנפשותם חייבין as “the criminal negligence of parents who failed to evacuate their children from a district smitten by an outbreak of smallpox.”<sup>117</sup> It should be noted that Rabbi Jakobovitz traces his own interest in medical ethics to the efforts of his grandfather to introduce the study of science to prestigious European Yeshivot. His curricular campaign was precipitated by the death of his first-born daughter in an influenza epidemic.<sup>118</sup> Given Rabbi Jakobovitz’s prominence in the field, the consequences of (now vaccine-preventable) infectious disease can thus fairly be said to have launched Jewish medical ethics in the twentieth century.

In Rambam’s time -- well before the availability of vaccines -- evacuation was the most effective means of shielding children and others from infectious disease. Nevertheless, Rambam elsewhere praises government officials who go to considerable

108 חכוך לח -- literally, wet rash. Smallpox seems to be indicated: “the spots (macules) change to pimples (papules), then to pea-sized blisters that are at first watery (vesicles) but soon become pus-filled (pustules).” See *The Bantam Medical Dictionary*, revised edition.

109 The 1712 Venice Selichot, Minhag Ashkenaz, p. 89ff, includes an entire section for fast days declared in response to epidemics, including, specifically, חולי אבעבועות -- probably, smallpox. The liturgy includes a number of piyyutim for use during such crises. See also the piyyut in response to an epidemic, at the end of Selichot Prague, 1784 (cf. מושל העליונים). Thank you to my teacher, Professor Menahem Schmelzer, for these citations.

110 חכוך יבש -- literally, dry rash. Measles appear as “small red spots with white centers (*Kopik's spots*)” developing into “a blotchy slightly elevated pink rash.” See *The Bantam Medical Dictionary*, revised edition. For a discussion of “wet” and “dry” rash in the context of the sixth of the ten plagues, see BT *Baba Kamma* 80B, and Rabbi Naftali Tzvi Yehudah Berlin (the Netziv), *Ha'amek Davar*, Exodus 9:9.

111 *Shulchan Aruch*, Orach Chaim 576:5.

112 Ad loc.

113 Rabbi Yehuda Ashkenazi, commentary included in *Mishnah Berurah*, died 1745.

114 Rabbi Abraham Gombiner, 1637-1683.

115 Rabbi Isaiah Horowitz, c. 1555-1630.

116 *Shulchan Aruch*, Yoreh De'ah 116:5, ad loc.

117 Rabbi Immanuel Jakobovitz, *Jewish Medical Ethics* (Bloch, New York, 1959), p. 12.

118 Rabbi Immanuel Jakobovitz, *Ha-Rav Ha-Lord: Sichot im Michael Shashar* [Hebrew] (Shashar Publishing, Jerusalem, 1996), p. 22

lengths to make medicine available to the public in anticipation of a mortal peril. Rambam composed his popular medical treatise "On Poisons" at the behest of his royal protector, Grand Vizier and Supreme Judge Al Fadhil. Rambam pays tribute to his patron for importing pharmaceutical ingredients otherwise unavailable in Egypt, but needed for two antidotes against poisons: the "great theriac" and the "electuary of Mithridates."<sup>119</sup> It is thus reasonable to infer that Rambam would have required prevention of infectious disease by the less disruptive and more effective means of vaccinating -- rather than evacuating -- children, if such a pharmaceutical recourse had then been available.

## V. The Obligation to Safeguard the Health of Others

סופו הוכיח על תחילתו -- "The conclusion is indicative of the quality and intent of earlier stages."<sup>120</sup> In the spirit of this adage, it is quite telling that the concluding two chapters of the *Shulchan Aruch* are devoted entirely to the religious obligation to extend life-saving efforts to those in mortal peril,<sup>121</sup> and to take preventive measures to remove foreseeable dangers to oneself and to others.<sup>122</sup> The fact that so definitive and so influential a code of Jewish law culminates with this topic speaks volumes as to the centrality of these values to the religious vision of our tradition.

Each of us has a pressing and far-reaching duty to intervene with life-saving action when a specific individual is met with imminent danger, whether or not the would-be victim is yet aware of the threat.

הרואה את חברו טובע בים או ליסטים באין עליו או חיה רעה באה עליו ויכול להצילו הוא בעצמו או שישכור אחרים להציל ולא הציל; או ששמע עכו"ם או מוסרים מחשבים עליו רעה או טומנים לו פח ולא גילה אותו חברו והודיעו; או שידע בעכו"ם או באנס שהוא בא על חברו ויכול לפייסו בגלל חברו ולהסיר מה שבלבו ולא פייסו; וכיוצא בדברים אלו; עובר על לא תעמוד על דם רעך.

"One who sees someone drowning in the sea, or being pursued by brigands, or being pursued by a wild animal, and he is able to save him, whether by himself or by hiring others to save him, yet he does not act to save him; or if he heard heathens or conspirators plotting against someone or setting a trap for him, yet he does not inform the would-be victim; or if he knew that a heathen or an assailant was coming after someone and that he could appease him on behalf of the intended victim and dissuade him from his violent intent, yet he did not act to appease him; or other similar circumstances; these violate the commandment 'You shall not stand idly by the blood of your neighbor.'<sup>123</sup>

Rambam states the principle more succinctly: כל היכול להציל ואינו הציל עובר על לא -- "Anyone who is able to save a life, but fails to do so, violates 'You shall not stand idly by the blood of your neighbor.'<sup>124</sup> He leaves no room for

119 See Fred Rosner, M.D., *Maimonides' Treatises on Poisons, Hemorrhoids, and Cohabitation* (Maimonides Research Institute, Haifa, 1984).

120 BT *Gittin* 66A, etc.

121 *Shulchan Aruch*, *Choshen Mishpat* 426.

122 *Shulchan Aruch*, *Choshen Mishpat* 427.

123 *Shulchan Aruch*, *Choshen Mishpat* 426:1.

124 Maimonides, *Mishneh Torah*, *Hilchot Rotzeach U'Shemirat Nefesh*, 1:14.

exemption: "All Israel are comanded to take life-saving action."<sup>125</sup>

The Talmud<sup>126</sup> reformulates the prohibition<sup>127</sup> on which this requirement is based ("You shall not stand idly by the blood of your neighbor"<sup>128</sup>) into a positive, prescriptive obligation, by relating the duty to intervene in life-threatening situations to the commandment<sup>129</sup> regarding restoration of lost property -- והשבותו לו. "Every individual, insofar as he is able, is obligated to restore the health of a fellow man no less than he is obligated to restore his property."<sup>130</sup>

Rabbi Eliezer Yehuda Waldenberg discusses how far this obligation to restore a fellow human being's health, under the rubric of lost property, extends:

שמחקרא דוהשבותו לו ילפינן שחייב הגשת עזרה לחבירו ולהשיב לו את גופו הוא לא רק בגופו או בממונו אלא בכל שהיכולת בידו, ולכן מרבה חייב הרופא שיכול להצילו ולהשיב לו את בריאות גופו בחכמתו, וא"כ נלמד מזה בפשיטות שהחייב הוא גם אפילו כשביכולתו להכריח את חבירו שאינו מבין או שלא איכפת לו להתרפאות שיסכים ויתרצה לכך לקבל הטיפול הדרוש, ואפילו לקחתו לטיפול בעל כרחו.

"From the verse 'You shall restore it to the owner' we learn that providing aid to one's fellow, and the obligation to restore another's health, requires us to expend not only personal effort and material resources, but includes any means at our disposal. Thus we infer from this the obligation of the physician who can save him and restore his health by virtue of his skill. Likewise, we learn simply that the obligation is even if one is able to coerce his fellow who does not understand or who doesn't particularly care about his recovery, so that he will agree and consent to the required treatment, and even to take him for treatment against his will."<sup>131</sup>

The religious obligation to secure the health and to safeguard the physical well-being of others is in force even before danger is imminent or any specific individual is placed at risk. We are duty-bound to anticipate dangers to ourselves and to others, and to take effective and appropriate steps to remedy the perilous condition. This duty is implied in the very first chapter of biblical legislation following the Revelation at Sinai. One is liable to capital punishment for a death caused by his ox if, the animal's predilection for goring having been legally established, he failed properly to secure the beast.<sup>132</sup> This law is followed by a statement of liability for a landowner who fails to cover a pit on his property, resulting in injury to a neighbor's livestock.<sup>133</sup> Both these laws assume an obligation to foresee danger and to take preventive measures.

<sup>125</sup> Ibid., 1:6.

<sup>126</sup> BT *Sanhedrin* 73A.

<sup>127</sup> For more on this issue, see my "*Hesed or Hiyuv? The Obligation to Preserve Life and the Question of Post-Mortem Organ Donation*," in *Responsa: 1991-2000* (RA/New York, 2002), pp. 175-190.

<sup>128</sup> Leviticus 19:16.

<sup>129</sup> Deuteronomy 22:2.

<sup>130</sup> Rabbi David Bleich, *Contemporary Halakhic Problems* (KTAV-YU/New York, 1977), p. 93.

<sup>131</sup> Rabbi Eliezer Waldenberg, *Responsa Tzitz Eliezer* 15:40, 1981.

<sup>132</sup> Exodus 21:29.

<sup>133</sup> Exodus 21:33-34.

The most explicit biblical expression of this moral duty is the requirement of a parapet: -- “When you build a new house, you shall make a parapet for your roof, so that you do not bring blood upon your house if anyone should fall from it.”<sup>134</sup> Both Rambam and *Choshen Mishpat* note that this verse attaches the force of two separate mitzvot to the mandated safety precaution: כל המניח גגו בלא מעקה ביטל מצוות עשה ועבר על לא תעשה שנאמר: ולא -- תשים דמים על ביתך -- “One who leaves his roof with no parapet has neglected a positive commandment and violated a negative commandment, to wit: ‘Do not bring blood upon your house.’”<sup>135</sup>

The Torah’s explicit prescription of a parapet -- a protective barrier designed to prevent death or injury from one particular hazard -- is treated in Jewish law as a paradigm. On the basis of this biblical injunction is constructed a broad category of religious obligation. Hazardous conditions found on one’s property or within one’s control require appropriate, proactive steps to obviate the danger.

אחד הגג ואחד כל דבר שיש בו סכנה וראוי שיכשל בה אדם וימות... וכן כל מכשול שיש בו סכנת נפשות מצוות עשה להסיר ולהשמר ממנו ולהזהר בדבר יפה, שנאמר: השמר לך ושמור נפשך. ואם לא הסיר והניח המכשולות המביאים לידי סכנה ביטל מצוות עשה ועובר בלא תשים דמים.

“It is one and the same for a roof and for anything which presents a hazard which a person is apt to encounter with lethal consequence... Thus for any hazard of mortal peril, it is a positive commandment to remove it, to keep away from it, and to be especially careful<sup>136</sup> in regard to the matter. As it is said: ‘Take utmost care and watch yourselves.’<sup>137</sup> If one fails to remove the condition, leaving the hazards and the dangers they present in place, one has neglected a positive commandment and has violated ‘Do not bring blood (upon your house).’”<sup>138</sup>

Lack of immunity to infectious disease (and, as a consequence, willfully remaining a potential source of contagion) is a hazard -- מכשול שיש בו סכנת נפשות. This hazard presents a readily documented, potentially lethal, and clearly foreseeable danger -- to the party failing to be immunized, to others who lack immunity, to vaccinated individuals whose immunity is ineffective or otherwise impaired, and to the community at large through diminution of “herd immunity.” This particular hazard is infinitely more difficult for others to avoid by virtue of vigilant personal caution than the roof-tops and pits explicitly mentioned in Scripture... and far more likely to claim multiple, innocent victims. Vaccination against infectious disease is the pharmaceutical equivalent of מעקה -- the biblically mandated parapet, designed effectively to shield potential victims from sudden fall, injury, and death. Immunization against infectious disease is thus logically rendered obligatory: “For any hazard of mortal peril, it is a positive commandment to remove it, to keep away from it, and to be especially careful in regard to the matter... If

134 Deuteronomy 22:8.

135 Maimonides, *Mishneh Torah, Hilchot Rotzeach U'Shemirat Nefesh*, 11:3;

*Shulchan Aruch, Choshen Mishpat*, 427:6.

136 Ibid., 11:4). ולהזהר בדבר יפה יפה -- Rambam provides double emphasis:

137 Deuteronomy 9:4.

138 *Shulchan Aruch, Choshen Mishpat* 427:7-8.



one fails to remove the condition, leaving the hazards and the dangers they present in place, one has neglected a positive commandment and has violated ‘Do not bring blood (upon your house).’”

Construction of a parapet on a dangerous roof is an undertaking that necessarily involves a measure of risk. The parapet is thus a particularly apt paradigm for immunization, a protective measure deemed obligatory despite a statistical risk incurred in the process.<sup>139</sup>

Rabbi Israel Mayer Ha-Kohen Kagan, the “Chofetz Chaim,” included a discussion of the “positive commandment to make a parapet” in his last book: *Sefer Ha-Mitzvot Ha-Katzar*, published in 1931. Quoting *Sefer Chareidim*,<sup>140</sup> the Chofetz Chaim counsels in regard to construction of a parapet: נחשב -- “When one bears this religious duty in mind every day, and sees if it requires any repair or improvement, it will be reckoned for him as though he fulfills the duty every day.”<sup>141</sup> Similarly, parents who have safeguarded the health and well-being of their children and others through proper immunization, who “bear this religious duty in mind,” and are vigilant concerning the epidemiological health of their children, “it will be reckoned for them as though they fulfill this mitzvah each and every day.” The spiritual merit of educators and policy-makers who safeguard the health of the 20,000 students enrolled in Jewish Day Schools affiliated with the Conservative Movement is commensurately compounded.

## **VI. Declining Treatment and Coercion in Health Care**

The right of an individual to reject or decline any given medical treatment is customarily traced to an incident involving Rabbi Yehudah Ha-Nasi.<sup>142</sup> Afflicted by an eye ailment, the redactor of the Mishnah was treated by his personal physician, Shmuel the Astronomer. Rabbi rejects two proposed courses of treatment, declaring in reference to each: לא יכילנא -- “I cannot bear it.” In a fascinating parallel to modern immunization protocols, the first treatment prescribed has been identified by our colleague, Rabbi Avram Reisner, as “an injection into the eye.”<sup>143</sup> The discretionary power entrusted to the patient, and exercised by Rabbi Yehudah Ha-Nasi, is traditionally expressed by the biblical verse, לב יודע מרת נפשו -- “The heart knows its own bitterness.”<sup>144</sup>

Rabbi Reisner emphasizes in the same study that the self-determination patients do enjoy in directing their own medical care is not without limits in Jewish Law. “Unlike the absolute autonomy recommended by secular ethicists, this autonomy inheres in the

139 Thank you to my teacher, Rabbi Joel Roth, for this insight.

140 Rabbi Eleazar Azikri, Venice 1601: a religious manual arranged according to practicable *mitzvot*, and thus a precursor to the Chofetz Chaim’s work.

141 Rabbi Israel Mayer Ha-Kohen Kagan, *The Concise Book of Mitzvoth* (Feldheim/New York, 1990), Positive Commandment #75, p. 95.

142 BT *Baba Metzia* 85B.

143 Rabbi Avram Reisner, “Care for the Terminally Ill: Halakhic Concepts and Values,” *Life and Death Responsibilities in Jewish Medical Ethics*, Rabbi Aaron Mackler, editor (JTS, 2000), p. 251.

144 Proverbs 14:10.

patient choosing life-giving treatment.”<sup>145</sup> Indeed, Shmuel the Astronomer finally succeeded in identifying an effective treatment acceptable to his patient. The sage he cured was so grateful that he sought to confer rabbinic ordination on his care-giver.

Unlike Rabbi's eye condition however, there is no effective or responsible medical alternative to immunization against infectious disease. Furthermore, Rabbi's autonomous choice of a medical protocol carried no implication for the health of others, as is clearly the case with immunization.

A modern rabbinic ruling weighing the interests of patient self-determination against the religious obligation to be healed also focuses on ophthalmic care. In 1981, Rabbi Eliezer Waldenberg<sup>146</sup> responded to a query from the Director of the Department of Ophthalmology at Jerusalem's Bikkur Cholim Hospital. Citing the high incidence of deteriorating vision (and, occasionally, eventual blindness) among Yeshivah students, the doctor asked if students had a halachic obligation to submit to preventive eye care. Rabbi Waldenberg affirmed the traditional view that loss of eye-sight is a life-threatening condition, paraphrasing the Book of Esther in reference to the urgency of the doctor's inquiry: נפשו בשאלתו -- “In his question, life is at stake.”<sup>147</sup> Rabbi Waldenberg ruled:

לנדון דידן בקשר לילדים בבתי חת"ת שהחורים וגם לרבות המלמדים והמנהלים דהיות היכולת בידם להכריח את ילדיהם לקבל הטפול הדרוש בעיניהם שמחויבים בכך מכח העשה של והשבותו לו.

“In our case regarding children in religious schools, the parents, as well as the teachers and administrators, who have the immediate authority to compel their children to receive the necessary eye treatment, are obligated to do so, by dint of the positive commandment ‘You shall restore it (i.e. personal property and, by extension, a person's health) to him.’”

Rabbi Waldenberg emphasizes how broadly this obligation extends: פשוט הדבר -- “The principle is widely accepted by the halachic authorities, of blessed memory, that a similar obligation devolves on all who are around a sick person.” This obligation Rabbi Waldenberg links to the “great principle of the Torah” -- “You shall love your neighbor as yourself.”<sup>148</sup> Failure to provide our children and our students with preventive (in this case, ophthalmic) care, Waldenberg deems a violation of an explicit prohibition of the Torah: לא תוכל להתעלם -- “You shall not remain indifferent.”<sup>149</sup> The force of Rabbi Waldenberg's responsum is clear, and analogous to the case of state-mandated immunization of school children. “Rav Waldenberg affirms that medical treatment, even a preventive measure, can be performed against the will of the patient.”<sup>150</sup>

Seventy-five years before Rabbi Waldenberg's ruling, German Jewry's pre-eminent halachic authority, Rabbi David Tzvi Hoffman, ruled concerning the limits to parental

145 Reisner, Op. Cit., p. 250.

146 Responsa *Tzitz Eliezer*, 15:40.

147 See Esther 7:3.

148 Leviticus 19:18.

149 Deuteronomy 22:3, regarding lost property, in conjunction with the positive formulation, והשבותו לו, in the preceding verse.

150 DiPoce and Buchbinder, Op. Cit., p. 97.

discretion in authorizing a dangerous but life-saving surgical procedure deemed necessary for their child. Citing Rabbi Jacob Reischer (Responsa *Shevut Yaakov* 3:75), he first explains that the authority of the physician is also limited. אין לעשות כן הרופא כפשוטו אלא יש להתיעץ עם רופאין מומחין שבעיר ויעשו עפ"י רוב דיעות דהיינו רובא דמינכר שהוא -- "The doctor should not act on his own accord, but should consult the other expert doctors of the town, and they should act in accordance with the majority view. By a majority in this connection is meant a clear majority, i.e. a two-thirds majority."<sup>151</sup> For Rabbi Hoffman, a two-thirds consensus in the medical community renders the life-saving procedure permissible and therefore obligatory.

דעת אביו ואמו לא מעלה ולא מוריד... ולא מצינו בכל התורה כולה שיש לאב ואם רשות לסכן נפש ילדיהם ולמנוע הרופא מלרפאותם.

"The opinion of the father and mother has no effect one way or the other... We do not find anywhere at all in the Torah that parents have a right to endanger the lives of their children by preventing the doctor from treating them."

The two-thirds consensus posited by Rabbi Hoffman in weighing risks and benefits is reframed in more general terms by a contemporary authority: "Society is the expert to decide whether a risk is acceptable or not."<sup>152</sup>

The obligatory nature of recourse to conventional medical treatment is widely acknowledged as a general principle:

"Recognized rabbinic decisors who have addressed the issue have concluded that, at least in theory, a patient whose life is endangered can be compelled to accept medically mandated treatment... If the efficacy of the medication or procedure is either substantiated by empirical data or predictable on the basis of cogent scientific reasoning, the therapy is probably mandated by Halacha."<sup>153</sup>

The *Turei Zahav*<sup>154</sup> observes wryly, שכר על זה, הן"ל די לאדם שיציל עצמו אלא עוד נותנין לו שכר על זה -- "One would think it sufficient that a person saves himself (through compliance with the religious duty of self-preservation), but he is additionally rewarded for his observance of these laws."<sup>155</sup> Nevertheless, the codes provide for a number of coercive measures aimed at those who endanger their own health and/or fail to remove hazards within their domain placing others in mortal peril. Thus, in reference to a series of precautionary measures prescribed for maintenance of one's personal health and well-being, we find this stipulation:

151 Rabbi David Hoffman, Responsa *Melamed Le-ho'il* 2:104, Frankfurt 1926. English translation from Rabbi Louis Jacobs, *Jewish Law* (Behrman House, 1968), p. 205. I am grateful to Rabbi David Greenstein for calling this text to my attention, and for his careful reading of early drafts of this paper.

152 Rabbi Moshe Tendler, recorded lecture (Institute for Jewish Medical Ethics, San Francisco), February 20, 1994.

153 Rabbi J. David Bleich, "May one refuse medical treatment?" *Sh'ma*, 23:443, December 11, 1992, pp. 17-19.

154 Rabbi David ben Shmuel Ha-Levi (1586-1667), son-in-law of the Bach, Rabbi Joel Sirkes.

155 *Shulchan Aruch* Choshen Mishpat 427 ad loc.

כל העובר על דברים אלו וכיוצא בהם ואמר הריני מסכן בעצמי ומה לאחרים עלי בכך או איני מקפיד בכך מכין אותו מכת מרדות.

“One who violates these (preventive) measures or others like them, saying: ‘So I endanger myself; what concern am I to anyone else?’ or ‘I am not particular about this’ -- he is punished with lashes of rebelliousness.”<sup>156</sup>

As to this prescribed lashing, *Aruch Ha-Shulchan* insists, דודאי יש בזה איסור דאורייתא -- “The intention here is not that this is merely a rabbinic prohibition (מכות מרדות usually indicate violation of a rabbinic norm), for this matter (endangering one’s health) is assuredly a prohibition from the Torah.”<sup>157</sup>

*Be’er Ha-Golah*<sup>158</sup> comments regarding such recalcitrants: “One who endangers himself, it is as if he despises the will of his Creator and wants neither to serve Him nor to receive any reward from Him. There is no greater or more brazen heresy than this!”<sup>159</sup>

Coercive measures are also available to compel individuals to remove hazards to the public safety. Maimonides lists twenty-four transgressions which are to be met with bans of excommunication. Among these he includes “One who has something harmful on his property, for example a vicious dog or an unsafe ladder, we place him under a ban until he removes the hazard.”<sup>160</sup> For those contemplating the health and safety measures incumbent on Jewish Day School educators, it should be noted that this ban of excommunication is prescribed under “The Laws of Torah Study.”

While neither corporeal punishment nor bans of excommunication are judicial tools to which today’s Jewish community makes frequent recourse, denial of admission to a Day School -- a measure somewhat analogous to a ban -- is a reasonable means to compel provision of standard health care. Even if such a principled standard fails to facilitate a child’s immunization, it keeps the school from the same transgression, as it protects students already enrolled from a potentially life-threatening source of contagion.

## VII. Special Considerations for the Jewish Day School

In addition to the religious obligations they share with all other Jews, a number of halachic concerns apply specifically to students of a Yeshiva or Hebrew Day School (such as those under the aegis of the Solomon Schechter Day School Association) by virtue of their enrollment at an elite institution of Jewish education. A student of Torah

156 *Shulchan Aruch Choshen Mishpat* 427:10. See also Maimonides, *Mishneh Torah Hilchot Rotzeach U-Shemirat Nefesh* 11:5.

157 *Aruch ha-Shulchan Choshen Mishpat* 427:8. *Aruch ha-Shulchan* is the work of Rabbi Yechiel Michal Epstein, 1829-1908. *Choshen Mishpat* was the first section completed, around 1893.

158 Rabbi Moses Rivkes, of Vilna and Amsterdam, died c. 1672.

159 *Shulchan Aruch Choshen Mishpat* 427:10, ad loc.

160 Maimonides *Mishneh Torah Hilchot Talmud Torah* 6:14, #7. See also BT *Ketubot* 41B.

has a redoubled religious duty to maintain personal health, so as to facilitate sacred learning. This is apparently the significance of the advice of the Gemara: כל עיר שאין בה -- ירק אין תלמיד חכם רשאי לדור שם -- “A Talmid Chacham<sup>161</sup> is not permitted to dwell in a city where proper vegetables are not available.”<sup>162</sup> To this, Rabbi Adin Steinsaltz comments succinctly: מפני חשש לבריאותו -- “because of concern for his health.”<sup>163</sup> A similar Talmudic guideline,<sup>164</sup> later codified by Maimonides,<sup>165</sup> includes both sanitary facilities and a physician among the indispensable amenities to be considered by the *talmid chacham* in selecting a community.

Similarly, while it is generally preferable to complete morning prayers and to begin the daily process of Torah study before breakfast, an exception is made if the delay interferes with learning.

“If one’s set time for learning is long, and he is weak, and because of his weakness, he will not be able to learn properly, it is best to eat something in advance... to prepare oneself. It is considered a prerequisite for one’s learning... This is especially so if one... fears any particular illness if he delays for a long time, for he has certainly committed a sin if he does not... strengthen his body. This is because it is a mitzvah for man to seek the way of health for his body so that he will be strong and healthy to learn Torah and perform mitzvot.”<sup>166</sup>

It is thus especially sinful for a student of Torah to remain willfully susceptible to disease by failing to be immunized, as this interferes with Torah study, both by potentially compromising the student’s health and by precluding admission to an appropriate school. Proactive, salutary measures taken to maintain personal health and to prevent disease are, in the case of Jewish Day School students, to be considered “a prerequisite for one’s learning” and, therefore, a sacred duty of particular consequence.

Those who knowingly subject themselves to risk and danger frequently cite the verse ‘שומר פתאים ה’ -- “The Lord protects the simple”<sup>167</sup> to justify their lack of caution. The biblical phrase suggests that those who simply put their faith in God will enjoy His providential protection, threats to life and limb notwithstanding. Interpreting “simple” as a descriptor of simple- or feeble-minded intellect, however, *Trumat HaDeshen* and *Chatam Sofer* rule that a *talmid chacham* may not rely on the protection afforded by this verse.”<sup>168</sup> A student with the benefit of a quality Jewish education -- a *talmid chacham* -- is not feeble-minded in his or her relationship to God, but is equipped with an extensive appreciation for personal responsibility and the demands of our tradition.

161 Literally, “disciple of a sage” -- a serious, committed student of Torah.

162 BT *Eruvin* 55B.

163 Ad loc.

164 בית כסא, רופא -- BT *Sanhedrin* 17B

165 Maimonides, *Mishneh Torah*, *Hilchot De’ot* 4:22.

166 Rabbi Moshe Machir (1500’s Tzefat), *Seder ha-Yom*, *Even Yisrael* Edition, pp. 46-47. Cited in DiPoce & Buchbinder, Op. Cit.

167 Psalms 116:6.

168 DiPoce & Buchbinder, Op. Cit. Citing Responsum #211, and *Even Ha-Ezer* Vol. 1, Responsum #23, respectively.

In addition to representing a grievous violation of clear Halachic duties, the express support of a Jewish Day School for exemption from state mandated immunizations, ostensibly on religious grounds, could have health consequences far beyond its own student body and immediate school community. The Jewish Day School is properly viewed as an institutional exemplar of Jewish knowledge, values, and religious commitment. It is, in any case, to this lofty station that the Jewish Day School properly aspires. Endorsement of Jewish religious objections to immunization by such an exemplar of Jewish tradition would discourage parents throughout the Jewish community -- already exposed to frightening myths and misinformation -- from immunizing their children, as well. Exemptor rates would be driven perilously high as Jewish (and perhaps other) parents reason that immunization must be truly hazardous if -- ostensibly on the basis of their tenaciously life-affirming religious tradition -- the community of parents most committed to Jewish education are refraining from immunizing their children. This collateral deterrent effect would only be compounded if parent objections are validated by school administrators... and all the more so by national organizations like the Solomon Schechter Day School Association, not to mention the Rabbinical Assembly Committee on Jewish Law and Standards.

Parents who enroll their children in Jewish Day School -- at least in part to shield them from the perils of competing value systems and value-neutral educational settings -- should be particularly attuned to the critical role of prophylaxis in safely and responsibly guiding children to maturity. Immunization offers no absolute guarantee of the desired outcome. Effective protection against childhood disease is, nevertheless, a necessary aspect of a parent's halachic duty to safeguard a child's physical well-being... just as Day School education, undertaken at considerable expense, is a particularly effective means of discharging the parental duty to provide for religious studies and spiritual guidance. The Solomon Schechter Day School Association and its constituent schools best fulfill their mission by firmly facilitating parental responsibility in both these areas of halachic obligation. הביאה למוסר לבן ואוזן לאמרי-דעת: אל תמנע מנער מוסר -- "Devote your heart to instruction, your ears to words of knowledge: Do not withhold corrective measures from your child."

## VII. Summary

1. Preservation of life and health is a primary obligation of Jewish Law and tradition, taking precedence over virtually all conflicting interests and obligations.
2. We are obligated not merely to preserve our own health, but to intervene with life-saving measures when others are in mortal peril.
3. We have an additional obligation to identify foreseeable dangers to the public health and safety, and to act effectively to remove all such hazards.
4. Parents have a primary religious and moral duty to protect their children from danger and disease with the most effective and appropriate means at their disposal. Jewish

tradition recognizes that this halachic obligation gives sanctified expression to the very laws of nature.

5. Infectious childhood diseases, and therefore potential carriers of these diseases, represent a life-threatening hazard, endangering countless potential victims.
6. Routine childhood vaccination has eradicated smallpox, saving thousands of lives each year, and has dramatically reduced the incidence of other formerly devastating conditions.
7. By submitting to vaccination, a child secures personal immunity from disease and is removed as a source of contagion to others, thus safeguarding the health of classmates and close contacts. Furthermore, a vaccinated child contributes to "herd immunity," thus helping to disrupt the chain of transmission of a disease, reducing the possibility of epidemic even among the unvaccinated.
8. Immunization is recognized as a necessary component of basic pediatric care by the overwhelming majority of the medical community. Jewish Law characteristically treats such defining standards of medical practice, based on the best available science, as dispositive.
9. Risks inherent in the immunization of children have been deemed acceptable and necessary by society, as indicated by mandatory school immunization laws in all fifty states, and Canada's similar laws encouraging immunization. The risks, though documented, are far outweighed by the benefits of immunization. Medical exemptions are readily available when this is not the case.
10. Jewish Day Schools have a special obligation, as exemplars of Jewish scholarship and religious commitment, to be vigilant in maintaining the public health and safety.
11. Since the earliest, primitive attempts at artificially inducing immunity to childhood disease, Rabbinic authorities have endorsed such medical protocols as permissible. As medicine's ability to prevent infectious childhood diseases through vaccination has grown safer, more refined, and more effective, routine immunization has been recognized as obligatory and, in addition to being the law of the land (*dina d'malchuta dina*), has been identified with no fewer than five positive and three negative Biblical commandments:

- a. לא תעמוד על דם רעך -- "You shall not stand idly by the blood of your neighbor." (Leviticus 19:16)
- b. ואהבת לרעך כמוך -- "You shall love your neighbor as yourself." (Leviticus 19:18)
- c. השמר לך ושמר נפשך מאד -- "Take utmost care and watch yourselves scrupulously." (Deuteronomy 4:9)
- d. ונשמרתם מאד לנפשותיכם -- "Be particularly careful of your well-being."

(Deuteronomy 4:15)

- e. והשבותו לו -- "You shall restore it to him." (The duty to restore lost property, expanded to include personal health -- Deuteronomy 22:2)
- f. לא תוכל להתעלם -- "You shall not remain indifferent." (Deuteronomy 22:3)
- g. ועשית מעקה לגגך -- "You shall make a parapet for your roof." (The obligation to remove hazards to the public health and safety from one's domain -- Deut. 22:8)
- h. לא תביא דמים על ביתך -- "You shall not bring blood upon your house." (Deut. 22:8)

### VIII. Conclusion

Timely administration of vaccines with a proven record of effectiveness and safety is "a basic and necessary requirement for appropriate pediatric care." Unless medically contraindicated for specific children, in extraordinary and compelling cases, parents have an unambiguous religious obligation to have their children immunized against infectious disease. By effectively removing their children as potential sources of contagion, and simultaneously contributing to "herd immunity," parents fulfill a related religious obligation to remove hazardous conditions which imperil the public's health and safety. Failure to immunize children against vaccine-preventable disease is a serious, compound violation of Jewish Law: there is no basis in Halakhah to support a parent's request for a religious exemption from state-mandated immunizations.

דעת אביו ואמו לא מעלה ולא מוריד... ולא מצינו בכל התורה כולה שיש לאב ואם רשות לסכן נפש ילדיהם ולמנוע הרופא מלרפאותם.

"The opinion of the father and mother has no effect one way or the other... We do not find anywhere at all in the Torah that parents have a right to endanger the lives of their children by preventing the doctor from treating them." [*Melamed L'ho'il* 2:104]

Furthermore, the obligation to remove hazardous conditions which place the public in mortal peril is also incumbent on Jewish educators, as well as on the administrators and trustees of Jewish Day Schools, such as those under the aegis of the Solomon Schechter Day School Association. Local schools fulfill this religious duty in part by requiring that children be immunized against infectious disease, and by shielding their students from those who are not. Unless a specific immunization is medically contraindicated, and so documented by a reliable physician, unvaccinated children -- even those who, in violation of Jewish Law, have secured a religious or philosophical exemption from the state -- are properly denied admission to Jewish Day Schools.

הערב נא ה' אלהינו את דברי תורתך



**ORTHODOX UNION**

# Statement on Vaccinations from the OU and Rabbinical Council of America

**OU Staff**

November 14, 2018

Orthodox Jewish parents, like responsible parents across the United States, overwhelmingly vaccinate their children against measles, mumps, rubella, polio and the other childhood diseases for which inoculations are now almost miraculously commonplace. As in many communities, a small minority of parents chooses not to do so. The ongoing measles outbreak demonstrates how this could bear very serious consequences, not only for their own children but others' too, especially those medically unable to be vaccinated. **The Orthodox Union (OU) and the Rabbinical Council of America (RCA) strongly urge all parents to vaccinate their healthy children on the timetable recommended by their pediatrician.**

Judaism places the highest value on preserving human life. It is well known that those facing even a *potential* life or death situation are instructed to set aside the Sabbath and other key tenets of *halachic* (Jewish law) observance until the emergency has passed. Prayers for good health and for the complete and perfect healing of the ill are an ages-old aspect of Jewish tradition. But prayers must go hand-in-hand with availing oneself of medical science, including vaccination.

There are *halachic* obligations to care for one's own health as well as to take measures to prevent harm and illness to others, and Jewish law defers to the consensus of medical experts in determining and prescribing appropriate medical responses to illness and prevention. Therefore, the consensus of major *poskim* (halachic decisors) supports the vaccination of children to protect them from disease, to eradicate illness from the larger community through so-called herd immunity, and thus to protect others who may be vulnerable.

While the health of children is an important consideration, everyone should consult with his or her religious, medical and legal advisors in determining what actions to take. Nothing in this statement should be construed to add to or detract from rights or obligations created by New York or other state and federal statutes and regulations.

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