

HM 427:8.2023b

Rabbis David J. Fine and Barry Leff

Dissenting Opinion to “Medical and Recreational Cannabis Usage” by Rabbi Raysh Weiss, PhD

Rabbi Weiss’s paper on medical and recreational marijuana usage contains seven piskei din, the first being on the permissibility of medical usage of marijuana, and the last six on recreational consumption. Votes were held separately for psak 1 and psakim 2-7.

We both voted in favor of psak 1, and against the latter six. Our negative vote on the latter six is not because we do not believe recreational usage of marijuana is permissible; to the contrary, we believe it is permissible, but we disagree with psak 3, which states,

3) In accordance with Rabbi Reuven Hammer’s 2020 responsum “Teshuva Concerning Smoking,” in acknowledgement of the established adverse health effects of smoking, this responsum likewise prohibits recreational use of cannabis in its smoked form.

One of us, Rabbi Fine, voted against Rabbi Hammer’s 2020 responsum (Rabbi Leff was not on the CJLS at that time).¹ One problem with psak 3 is that the data in Rabbi Hammer’s paper is all based on smoking tobacco and nicotine dependence. The research that went into that paper is irrelevant to the case of smoking marijuana. (We are not arguing that marijuana smoking is less harmful; simply that the data is irrelevant).

There is no doubt that consumption of either tobacco or marijuana can be harmful to one’s health. While saving lives is indeed a top Jewish priority, we do not see it as reasonable to consider those engaged responsibly in inherent risky behavior to be deemed as transgressors and sinners in Jewish law.

Recent research has shown that the supposed health benefits of a glass of wine a day are a statistical artifact associated with the fact that many unhealthy people drink no alcohol because of medications they are taking. Scientists now believe there is no level of alcohol consumption

¹ See Reuven Hammer, “Teshuvah Concerning Smoking” CJLS HM 427:8.2020 [Hammer on smoking - corrected final.pdf \(rabbinicalassembly.org\)](#). See also Seymour Siegel, “Smoking: A Jewish Perspective” CJLS HM 427:8.1986 [siegel_smoking.pdf \(rabbinicalassembly.org\)](#) and David Golinkin, “Smoking in Jewish Law” *Responsa of the Vaad Halakhah of the Rabbinical Assembly of Israel*, vol. 4, pp. 38-56 [Microsoft Word - responsavol4_new.doc \(responsafortoday.com\)](#) and bibliography there. While acknowledging the weight of halakhic literature against smoking, Rabbi Fine was concerned that the absolute prohibition against all and any tobacco use, including occasional recreational usage, beyond the more nuanced “discouragement” of Rabbi Siegel’s 1986 paper (but aligned with Rabbi Golinkin’s view) would be an unnecessary extension of the category of “transgression.” Rabbi Fine was further concerned with the inconsistency that the CJLS was taking a very strong position in 2020 against smoking tobacco while considering taking a lenient position on consumption of cannabis (as approved here in 2023). The inconsistency suggested an imprudent influence of cultural values rather than a fair evaluation of the medical evidence.

that causes no harm.² However, the risks from consuming a low level of alcohol does not seem to be great, hence no one is lobbying that the halakhah must be changed to ban wine.

A study in BMJ (British Medical Journal) reports that ultra-processed foods are associated with cardiovascular disease and death.³ Should they be banned? Another study reported in BMJ, this one an umbrella review of existing research, found added sugars to be correlated with many negative health outcomes from obesity to cardiovascular disease to depression.⁴ Should we make it forbidden to add sugar to our coffee?

Many activities people find pleasurable can be unhealthy or dangerous. We leave it to the individual to decide what kind of diet to eat and whether or not to engage in dangerous activities such as downhill skiing, bungee jumping, SCUBA diving, flying small planes or riding motorcycles.

Everyday life is full of dangers. Over 40,000 people die in car accidents in America every year.⁵ We believe what the Jewish concern for health and avoiding danger teaches us is not a simple, "Do not drive." Rather, when we drive, we should do it as safely as possible: wear our seat belts, obey speed limits, adjust speed for conditions, keep the vehicle well-maintained.

We believe the appropriate guidelines for recreational marijuana consumption are three-fold:

1. Consumption should be done in a manner that does not cause undue harm to one's health. Having a few puffs on a joint a few times a year is no doubt less injurious than consuming a gummy every day. Hence our objection to psak 3 as a blanket statement.
2. Consumption should be done in a way that takes into account the health of others, so it is important to avoid exposing others, especially minors, to secondhand smoke, or to operate vehicles or other dangerous equipment when impaired.
3. In keeping with the principle of dina d'malkhuta dina, consumption of marijuana should be done in compliance with relevant laws and regulations.

² See the 2023 news release of the World Health Organization: [No level of alcohol consumption is safe for our health \(who.int\)](#)

³ "New evidence links ultra-processed foods with a range of health risks," BMJ (British Medical Journal), May 25, 2019, <https://www.bmj.com/company/newsroom/new-evidence-links-ultra-processed-foods-with-a-range-of-health-risks/>

⁴ "Dietary sugar consumption and health: umbrella review," BMJ, April 5, 2023, <https://www.bmj.com/content/381/bmj-2022-071609>

⁵ "NHTSA Estimates for 2022 Show Roadway Fatalities Remain Flat After Two Years of Dramatic Increases," National Highway Traffic Safety Administration, April 20, 2023, <https://www.nhtsa.gov/press-releases/traffic-crash-death-estimates-2022>