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Rabbi Reuven Hammer

(completed posthumously by Rabbi Avram Israel Reisner and Toby Schonfeld)

## Teshuvah Concerning Smoking<sup>1</sup>

*Approved on August 31, 2020, by a vote of 12-1-6. Voting in favor: Rabbis Pamela Barmash, Suzanne Brody, Nate Crane, Elliot Dorff, Susan Grossman, Jan Kaufman, Amy Levin, Daniel Nevins, Micah Peltz, Avram Reisner, Robert Scheinberg, and Ariel Stofenmacher. Voting against: Rabbi David Fine. Abstaining: Rabbis Jaymee Alpert, Joshua Heller, Jeremy Kalmanofsky, Steven Kane, David Schuck, and Deborah Silver.*

יהושע בן פרחיה אומר: עשה לך רב וקנה לך חבר (משנה אבות א, ו)  
לזכר נשמת הרב ראובן אליעזר בן דוד ולאח ז"ל

**She'elah:** In light of additional research findings on the use of nicotine and the burgeoning use of e-cigarettes, should smoking be prohibited?

**Teshuvah:** Many years ago, a teshuvah by Rabbi Seymour Siegel, then chair of the CJLS, declared that “Jewish ethics and Jewish Law would prohibit the use of cigarettes”.<sup>2</sup> But it went only so far, in the end, as to discourage the use of tobacco in “synagogues, schools and other Jewish gathering places”. In light of the extensive science that has accumulated in the years since then, this teshuvah seeks to revise and update that opinion and extend it by strengthening the ban on tobacco smoking of all types, and by addressing the issue of Electronic Nicotine Delivery Systems (ENDS), particularly as it relates to teens.

### Harms from Smoking

According to the US Center for Disease Control and Prevention (CDC), tobacco remains the leading cause of preventable death in the world, responsible for more than 7 million deaths annually and reducing life expectancy by 10 years for smokers compared to non-smokers.[2] According to the US Center for Disease Control and Prevention (CDC), tobacco remains the leading cause of preventable death in the US, responsible for more than 480,000 people annually

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*The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.*

<sup>1</sup> While there are similarities between tobacco smoking and marijuana smoking, a full discussion of the scientific characteristics of marijuana -- and the applicable halacha -- are beyond the scope of this paper.

<sup>2</sup> The complete teshuvah by Seymour Siegel, appears in Proceedings of the Committee on Jewish Law and Standards, 1986-90, pp. 7-11 and again in Responsa 1980-1990 of CJLS, pp. 833-837 and is presented here as an appendix to this teshuvah.

and reducing life expectancy by 10 years for smokers compared to non-smokers.<sup>3</sup> A study conducted by the Office of the Surgeon General of the United States demonstrated that second-hand smoke causes premature death even in those who do not or who have never smoked, and there is no “safe” or “risk free” level of exposure to secondhand smoke.<sup>4</sup>

While the 1964 US Surgeon General’s report on smoking had significant effect on public behavior,<sup>5</sup> it was reinforced in 1988 when nicotine was officially declared addictive by the US Surgeon General because scientific evidence demonstrated that continued smoking was not simply a matter of preference, but in fact was connected to neurobiological changes in the smoker.<sup>6</sup> There are molecular and anatomical bases for the effects of nicotine on appetite, mood, and depression, the latter in particular with adolescent smokers. Additionally, there is evidence that nicotine exposure during early development and adolescence also contributes to susceptibility to tobacco addiction later in life.<sup>7</sup>

While discussions about heated tobacco normally center on cigarettes, there are other forms of nicotine delivery systems that are equally problematic. Waterpipe tobacco smoking, known as “narghileh”, “shisha” or “hookah,” has been considered by many to be less dangerous than other heated tobacco products due to a variety of factors such as: water filtration, little or no nicotine, fewer chemicals, social acceptability, a perception that it is less addictive than cigarette smoking.<sup>8</sup> Yet studies show that there are significant negative health effects associated with waterpipe tobacco smoking, including respiratory diseases, cardiovascular disease, metabolic syndrome, and mental health.<sup>9</sup> And in fact, because of the heated water vapor, waterpipe tobacco

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<sup>3</sup> US Centers for Disease Control and Prevention, “Fast Facts: Smoking and Tobacco Use.” Accessed 15 June 2020. Available at:

[https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/fast\\_facts/index.htm#:~:text=Smoking%20is%20the%20leading%20cause,7%20million%20deaths%20per%20year..](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/index.htm#:~:text=Smoking%20is%20the%20leading%20cause,7%20million%20deaths%20per%20year..)

<sup>4</sup> U.S. Department of Health and Human Services. The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.

<sup>5</sup> Marshall TR. The 1964 Surgeon General's report and Americans' beliefs about smoking. *J Hist Med Allied Sci.* 2015;70(2):250-278. doi:10.1093/jhmas/jrt057

<sup>6</sup> Picciotto, MR and YS Mineur (2014). Molecules and Circuits Involved in Nicotine Addiction: The Many Faces of Smoking. *Neuropharmacology* 76. doi:10.1016/j.neuropharm.2013.04.028.

<sup>7</sup> Picciotto and Mineur.

<sup>8</sup> Akl EA, Ward KD, Bteddini D, Khaliel R, Alexander AC, Lotfi T, et al. The allure of the waterpipe: a narrative review of factors affecting the epidemic rise in waterpipe smoking among young persons globally. *Tob Control.* 2015;24 Suppl 1:i13–i21. doi: [10.1136/tobaccocontrol-2014-051906](https://doi.org/10.1136/tobaccocontrol-2014-051906); Akl EA, Jawad M, Lam WY, Co CN, Obeid R, Irani J. Motives, beliefs and attitudes towards waterpipe tobacco smoking: a systematic review. *Harm Reduct J.* 2013;10:12 doi: [10.1186/1477-7517-10-12](https://doi.org/10.1186/1477-7517-10-12).

<sup>9</sup> Reem Waziry, Mohammed Jawad, Rami A Ballout, Mohammad Al Akel, Elie A Akl, The effects of waterpipe tobacco smoking on health outcomes: an updated systematic review and meta-analysis, *International Journal of Epidemiology*, Volume 46, Issue 1, February 2017, Pages 32–43, <https://doi.org/10.1093/ije/dyw021>; WHO Study Group on Tobacco Product Regulation (TobReg), Advisory note: Waterpipe tobacco smoking: health effects, research needs and recommended actions for regulators (2nd edition). Accessed 15 June 2020. Available at: <https://escholarship.org/uc/item/9mn3k2fq>.

smokers may in fact absorb more of the toxic chemicals involved in the mix than do cigarette smokers.<sup>10</sup>

Furthermore, cigars and pipes, while often smoked in a different pattern than cigarettes, remain deleterious to health. Cigars, a form of tobacco that is wrapped and heated, contain the same toxic and carcinogenic compounds found in cigarettes and are not a safe alternative to cigarettes.<sup>11</sup> Studies show that regular cigar smoking is associated with an increased risk for cancers of the lung, esophagus, larynx (voice box), and oral cavity (lip, tongue, mouth, throat); gum disease and tooth loss; coronary heart disease, and other lung diseases.<sup>12</sup> While fewer studies have examined the risks associated with those who exclusively smoke a pipe, data suggest that the practice confers similar risks to that of smoking cigars.<sup>13</sup>

### Nicotine Dependence

There are three phases of nicotine dependence: (1) acquiring and maintaining nicotine-taking behavior, which is reinforced by the “mild pleasurable rush, mild euphoria, increased arousal, decreased fatigue, and relaxation” effects often created by nicotine use.<sup>14</sup> (2) Stopping the intake of nicotine results in withdrawal symptoms, on account of changes in the brain that nicotine ingestion has made. (3) Those who have ceased smoking remain vulnerable to relapse for “weeks, months, or even years after cessation,” demonstrating the power of the dependence on nicotine.<sup>15</sup>

Because of these three phases, effective cessation strategies must target all three phases and the effects experienced by smokers at each phase.<sup>16</sup> That is, it will be insufficient to simply target behavior when, in fact, there are neurobiological causes for many of the behaviors smokers display. The medicalization of the treatment of smoking addresses some issues (recognizing and addressing the biology of addiction), yet creates others: one study demonstrated that framing tobacco dependence as a “brain disease” and downplaying the role of choice and autonomy may alienate smokers and may make them less likely to seek out health professionals for

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<sup>10</sup> US Centers for Disease Control and Prevention. Smoking and Tobacco Use: Hookahs. Accessed 15 June 2020. Available at: [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/tobacco\\_industry/hookahs/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/hookahs/index.htm).

<sup>11</sup> US Centers for Disease Control and Prevention. Smoking and Tobacco Use: Cigars. Accessed 15 June 2020. Available at:

[https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/tobacco\\_industry/cigars/index.htm#health-effects](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/cigars/index.htm#health-effects).

<sup>12</sup> Ibid.

<sup>13</sup> S. Jane Henley, Michael J. Thun, Ann Chao, Eugenia E. Calle, Association Between Exclusive Pipe Smoking and Mortality From Cancer and Other Diseases, *JNCI: Journal of the National Cancer Institute*, Volume 96, Issue 11, 2 June 2004, Pages 853–861, <https://doi.org/10.1093/jnci/djh144>.

<sup>14</sup> D’Souza, Manoranjan S., and Athina Markou (2011). Neuronal Mechanisms Underlying Development of Nicotine Dependence: Implications for Novel Smoking-Cessation Treatments. *Addiction Science and Clinical Practice* 6.1: 4-16. Doi:

<sup>15</sup> D’Souza and Manoranjan.

<sup>16</sup> Aveyard, Paul and Martin Raw (2012). Improving Smoking Cessation Approaches at the Individual Level. *Tobacco Control* 21: 252-257.

treatment/assistance with quitting.<sup>17</sup> Partnership between smokers and health professionals is the most likely strategy to address nicotine dependence, and words matter in developing allies.<sup>18</sup>

Laws and policies that prohibit smoking in public places have been demonstrated to improve health outcomes, some almost immediately after the policy has been implemented.<sup>19</sup> As of 4 June 2019, 27 states, Washington, D.C., Puerto Rico and the U.S. Virgin Islands, plus hundreds of cities and counties, have enacted comprehensive smoke-free laws covering workplaces, restaurants, and bars, while another 3 states have enacted strong smoke-free laws covering restaurants and bars. At least 55 countries also have comprehensive smoke-free laws, protecting nearly 1.5 billion people worldwide.<sup>20</sup>

The Ministry of Health of Israel issued a Law on Restriction on Advertising and Marketing of Tobacco and Smoking Products in 1983, with several important amendments in the decades since then.<sup>21</sup> The major extension of the plan in 2011 aimed to improve protection against second-hand smoke and to reduce smoking and “smoking experimentation” among the youth of Israel, and therefore banned smoking in educational institutions.<sup>22</sup> More recent amendments to the law significantly narrowed advertising for tobacco products and significantly enhanced risk warnings.<sup>23</sup>

### The Electronic Nicotine Device Systems (ENDS)

Cigarette ‘substitutes’ – known as Electronic Nicotine Device Systems (ENDS) that include e-cigarettes and vaping pens - have now become a major industry, frequently produced and promoted by tobacco companies themselves. As of November 2018 there were 7 million users. In 2018, more than 3.6 million US middle and high school students had used e-cigarettes in the past 30 days: 4.9% of all middle school students and 20.8% of all high school students reported

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<sup>17</sup> Morphett, Kylie, Adrian Carter, Wayne Hall, And Coral Gartner (2017). Framing Tobacco Dependence as a “Brain Disease”: Implications for Policy and Practice. *Nicotine and Tobacco Research* 19.7: 774-480.

<sup>18</sup> Wolff, Fred, John R. Hughes, and Susan S. Woods. (2013). New Terminology for the Treatment of Tobacco Dependence: A Proposal for Debate. *Journal of Smoking Cessation* 8.2: 71-75.

<sup>19</sup> [Frazer K, Callinan JE, McHugh J, van Baarsel S, Clarke A, Doherty K, Kelleher C.](#) (2016). Legislative smoking bans for reducing harms from secondhand smoke exposure, smoking prevalence and tobacco consumption. [Cochrane Database Syst Rev.](#) 2:CD005992. doi: 10.1002/14651858.CD005992.pub3.

<sup>20</sup> Campaign for Tobacco-Free Kids (2019). “US State and Local Issues: Smoke-Free Laws.” Available at: <https://www.tobaccofreekids.org/what-we-do/us/smoke-free-laws> Accessed 1 December 2019.

<sup>21</sup> Ministry of Health, State of Israel. Law on Restriction on Advertising and Marketing of Tobacco and Smoking Products. Accessed 15 June 2020. Available at: <https://www.health.gov.il/English/Topics/KHealth/smoking/Pages/marketing-restriction.aspx>.

<sup>22</sup> Ministry of Health, State of Israel. Extension of the Prevention of Smoking Law. Accessed 15 June 2020. Available at: <https://www.health.gov.il/English/Topics/KHealth/smoking/Pages/smoking.aspx>.

<sup>23</sup> Ministry of Health, State of Israel. Law on Restriction on Advertising and Marketing of Tobacco and Smoking Products. Accessed 15 June 2020. Available at: <https://www.health.gov.il/English/Topics/KHealth/smoking/Pages/marketing-restriction.aspx>.

using e-cigarettes on at least 1 day during the past 30 days.<sup>24</sup> In 2015, 40% of e-cigarette smokers between 18-24 years had never been regular cigarette smokers.<sup>25</sup>

Evaluating the effects of these products on health is problematic since there are several different kinds of e-cigarettes and vaporizers and each kind and each brand may have different effects upon health. E-cigarettes can resemble regular cigarettes, cigars, or pipes, or even pens or USB sticks. They operate by heating a liquid that contains nicotine, flavoring, and other chemicals that make an aerosol to be inhaled. A 2018 report from the National Academies of Sciences, Engineering, and Medicine (NASEM) concluded that exposure to nicotine (the addictive substance) is “highly variable” in e-cigarettes, as it depends on “...characteristics of the products, including those of the device and e- liquids, as well as how the device is operated.”<sup>26</sup>

Data on the effects of ENDS are spotty and uneven, and their relatively recent introduction to the market has made long-term studies so far impossible. In addition, there have been scientific and ethical problems with much of the science, using “...a non-realistic environment, small sample size, or artificial interventions attempting to help quit smoking.”<sup>27</sup> The challenge, as noted by the NASEM, is that the health effects of traditional smoking were not fully appreciated until decades after the science began. As one group of scientists comments, “[t]he lesson from smoking in the 20<sup>th</sup> ‘cigarette’ century is that it took decades to show that addictive, heavily marketed inhaled tobacco products caused lung disease. It is therefore imperative that the scientific community uses all available modalities to define the health effects of novel tobacco products so that public health policy can be based on evidence.”<sup>28</sup>

Data are starting to emerge, however, on the dangers of ENDS. As of November 5, 2019, 2,051 cases of e-cigarette, or vaping, product use associated lung injury have been reported to CDC from 49 states (all except Alaska), the District of Columbia, and 1 U.S. territory. Thirty-nine deaths have been confirmed in 24 states and the District of Columbia.<sup>29</sup> In addition, states and the CDC are beginning to identify “clusters” of patients whose similar characteristics suggest toxicities from ENDS independent of nicotine addiction. Wisconsin and Illinois identified an initial 53 patients in a pulmonary disease cluster, all of whom had a history of e-cigarette use and 94% of whom reported the last use of an ENDS within one week of hospitalization.<sup>30</sup> The authors comment that “[a]lthough the definitive cause of this cluster remains unknown, the

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<sup>24</sup> US Centers for Disease Control and Prevention, “Youth and Tobacco Use” Available at: [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/youth\\_data/tobacco\\_use/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm). Accessed 12 December 2019.

<sup>25</sup> US Centers for Disease Control and Prevention, “Who is Using E-Cigarettes?” Available at: [https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/pdfs/Electronic-Cigarettes-Infographic-p.pdf](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/pdfs/Electronic-Cigarettes-Infographic-p.pdf) Accessed 1 December 2019.

<sup>26</sup> National Academies of Sciences, Engineering, and Medicine (2018). Public Health Consequences of e-Cigarettes: A Consensus Study Report. Available at: <http://nationalacademies.org/hmd/Reports/2018/public-health-consequences-of-e-cigarettes.aspx>. Accessed 1 December 2019.

<sup>27</sup> Park and Choi (2019). “Differences Between the Effects of Conventional Cigarettes, e-Cigarettes, and Dual Product Use on Urine Cotinine Levels.” *Tobacco Induced Diseases* 12: DOI: 10.18332/tid/100527. P. 6.

<sup>28</sup> Gotts et al (2019). “What are the Respiratory Effects of e-Cigarettes?” *British Medical Journal* 366: I5275. P. 1.

<sup>29</sup> US Centers for Disease Control and Prevention (2019). “Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products.” Available at: [https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/severe-lung-disease.html](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html). Accessed 1 December 2019.

<sup>30</sup> Layden et al. (2019). “Pulmonary Illness Related to e-Cigarette Use in Illinois and Wisconsin – Preliminary Report.” *New England Journal of Medicine* DOI: 10.1056/NEJMoa1911614.

severity of the illness and the recent increase in the incidence of this clinical syndrome indicate that these cases represent a new or a newly recognized and worrisome cluster of pulmonary disease related to vaping.”<sup>31</sup> There have been additional reports since this original cluster in other states, yet both the underlying mechanisms of injury and the precise methods used to obtain these sources remain uncertain.<sup>32</sup> The only conclusions that can be drawn at this point, says the author, is that public health agencies and individual practitioners have a responsibility to warn the public of the dangers of vaping and to discourage its use.<sup>33</sup> As of 19 November 2019, the American Medical Association has called for a total ban on all e-cigarette and vaping products that do not meet US Food and Drug Administration (FDA) approval as cessation tools.<sup>34</sup> Most recently, a study published in the American Journal of Preventive Medicine concluded that “Use of e-cigarettes is an independent risk factor for respiratory disease in addition to combustible tobacco smoking.”<sup>35</sup>

Both the FDA and the CDC, however, still describe the possible benefit of the use of ENDS as a mechanism to help adult smokers stop smoking. The NASEM report agrees: “Completely substituting e-cigarettes for combustible tobacco cigarettes conclusively reduces a person’s exposure to many toxicants and carcinogens present in combustible tobacco cigarettes and may result in reduced adverse health outcomes in several organ systems. Across a range of studies and outcomes, e-cigarettes appear to pose less risk to an individual than combustible tobacco cigarettes.”<sup>36</sup> New data are being released about this. In one promising study of 886 smokers in the UK where researchers were assessing the rates of smoking cessation using e-cigarettes compared with nicotine replacement therapy, the rate of sustained 1-year abstinence from combustible tobacco was 18.0% in the e-cigarette group and 9.9% in the nicotine-replacement group.<sup>37</sup> The authors admit that this effect was stronger than that shown in many previous trials, and suggest this may be on account of the self-selected nature of the population (all were smokers wanting to quit), the provision of face-to-face behavioral support, and the use of refillable e-cigarettes with a free choice of e-liquids.<sup>38</sup> The latter point relates to the fact that the delivery of nicotine was more efficient than with other ENDS like cartridges, and as a result these devices were more effective in “alleviating tobacco withdrawal symptoms” and may have been better able to adjust the dose of nicotine required by each participant.<sup>39</sup>

The editorial that appears in the same issue of the journal, however, suggests caution in the interpretation of these findings. For one thing, the outcomes they report are consistent with the data on nicotine-replacement therapy more generally: treatment with nicotine-replacement

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<sup>31</sup> Ibid.

<sup>32</sup> Christiani (2019). “Vaping-Induced Lung Injury.” *New England Journal of Medicine* DOI: 10.1056/NEJMe1912032

<sup>33</sup> Ibid.

<sup>34</sup> American Medical Association (2019). “AMA Calls for Total Ban on All Vaping Products Not Approved by FDA.” Available at: <https://www.ama-assn.org/press-center/press-releases/ama-calls-total-ban-all-vaping-products-not-approved-fda> Accessed 1 December 2019.

<sup>35</sup> D. Bhatta and S. Glantz (2019). “Association of E-Cigarette Use With Respiratory Disease Among Adults: A Longitudinal Analysis,” *American Journal of Preventive Medicine*. DOI: <https://doi.org/10.1016/j.amepre.2019.07.028>

<sup>36</sup> NASEM 2018.

<sup>37</sup> Hajeck et al. (2019). “A Randomized Trial of E-Cigarettes versus Nicotine-Replacement Therapy.” *New England Journal of Medicine* 380: 629-637.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

therapy and an anti-depressant achieves abstinence rates of 20% at one year.<sup>40</sup> But what is significant is that the safety profiles of these medications are much more established than that of e-cigarettes. Any evidence of effectiveness must be balanced with the safety (or lack thereof) of e-cigarettes themselves.<sup>41</sup> Consider that at the end of the year, 80% of those in the e-cigarette group were still using e-cigarettes, while only 9% in the nicotine-replacement group were still on replacement therapy.<sup>42</sup> The overall health benefits, then, consider not just the effects of stopping smoking but any additional toxicities that are introduced by e-cigarettes. Because of this, the authors argue that:

A consensus has emerged that e-cigarettes are safer than traditional combustible cigarettes, but it remains controversial whether e-cigarettes should be recommended as a first-line treatment to assist smoking cessation, alongside FDA-approved treatments. The appropriate duration of e-cigarette “treatment” for smokers trying to quit is also uncertain. We recommend that e-cigarettes be used only when FDA-approved treatments (combined with behavioral counseling) fail, that patients be advised to use the lowest dose needed to manage their cravings, and that there be a clear timeline and “off ramp” for use. Use of e-cigarettes should be monitored by health care providers, like other pharmacologic smoking-cessation treatments. The efficacy and safety of e-cigarettes need to be evaluated in high-risk subgroups, and further research on the health consequences of long-term e-cigarette use is needed.<sup>43</sup>

An additional scientific challenge is the difference between modeling of behavior and the way people, in fact, act. Under the assumption that using e-cigarettes increases the net cessation rate of combustible tobacco cigarettes among adults, the modeling projects that in the short run, use of these products will generate a net public health benefit, despite the increased use of combustible tobacco products by young people. Yet in the long term (for instance, 50 years out), the public health benefit is substantially less and is even negative under some scenarios. If the products do not increase combustible tobacco cessation in adults, then with the range of assumptions the committee used, the model projects that there would be net public health harm in the short and long term.<sup>44</sup>

The problem is that data are beginning to show that many adult smokers who begin using e-cigarettes in fact become *dual users*: using *both* combustible cigarettes and ENDS. In 2015, among all adult e-cigarette users, 11.4% had never been regular cigarette smokers, 29.8% were former regular cigarette smokers, and 58.8% were *current* regular smokers.<sup>45</sup> When this happens

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<sup>40</sup> Rosen et al. (2018). Diminishing Benefits of Smoking Cessation Medications During the First Year: A Meta-Analysis of Randomized Controlled Trials. *Addiction* 113: 805-816.

<sup>41</sup> Borrelli and O'Connor (2019). E-Cigarettes to Assist with Smoking Cessation.” *New England Journal of Medicine* 380: 678-679.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> National Academies of Sciences, Engineering, and Medicine (2018). Public Health Consequences of e-Cigarettes: A Consensus Study Report. Available at: <http://nationalacademies.org/hmd/Reports/2018/public-health-consequences-of-e-cigarettes.aspx>. Accessed 1 December 2019.

<sup>45</sup> US Centers for Disease Control and Prevention, “Who is Using E-Cigarettes?” Available at: [https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/pdfs/Electronic-Cigarettes-Infographic-p.pdf](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/pdfs/Electronic-Cigarettes-Infographic-p.pdf) Accessed 1 December 2019.

(smokers use both delivery mechanisms), their outcomes are worse. As one study found: “urine cotinine [a common scientific marker for nicotine] concentration [UCC] was highest in dual users regardless of age, occupation, and number of cigarettes per day...[Combustible cigarette] smokers and dual users used almost the same numbers of cigarettes per day, which suggests that dual users do not reduce the number of cigarettes smoked, and rather add e-cigarette use. Even if e-cigarettes have the mid- to long-term effect of quitting smoking, there is a need to prioritize interventions for dual users in the real world because UCC is higher in this group than any other group.”<sup>46</sup>

### Youth and Young Adults

In the US, youth are more likely than adults to use e-cigarettes. 2019 data from the National Youth Tobacco Survey demonstrate that over 5 million youth have used e-cigarettes in the past 30 days and nearly 1 million report daily use.<sup>47</sup> According to a 2016 report from the US Surgeon General, e-cigarette use has grown 900% among high school students from 2011-2015.<sup>48</sup> In the annual “Monitoring the Future” survey, the prevalence rates of e-cigarette use in 8<sup>th</sup>, 10<sup>th</sup>, and 12<sup>th</sup> graders in 2018 were 9.7%, 20%, and 25% respectively. Increases in 10<sup>th</sup> and 12<sup>th</sup> graders “...were the largest recorded for any substance in the 44 years that the study has tracked adolescent drug use.”<sup>49</sup> In fact, the FDA reports that while cigarette smoking is at all-time low among high school students, increases in e-cigarette use have reversed progress made in decline of overall youth tobacco use.<sup>50</sup>

A large study of smoking in Israel revealed that, at the time of recruitment into the Israel Defense Forces over the last 24 years, 31% of boys and 25.7% of girls smoked. The average age for beginning to smoke for boys and girls was 15.7 and 16, respectively<sup>51</sup>.

There are data to suggest that the youth who use e-cigarettes think that they pose “little or no harm,” and among students who had ever tried e-cigarettes in 2012, 72% believed they were less harmful than traditional cigarettes.<sup>52</sup> Youth describe a number of reasons for using e-cigarettes, including curiosity, flavorings/taste, use as a less harmful/less toxic alternative to conventional cigarettes, and avoidance of indoor smoking restrictions or disturbing people with second-hand smoke from traditional cigarettes.<sup>53</sup> The most commonly selected reasons for use were: (1) use

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<sup>46</sup> Park and Choi pp. 6-7. And see the newest study, cited at note 18, which finds that “Dual use, the most common use pattern, is riskier than using either product alone.”

<sup>47</sup> US Food and Drug Administration (2019). “Youth Tobacco Use: Results from the National Youth Tobacco Survey.” Available at: <https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-survey>. Accessed 1 December 2019. Also: Cullen et al. (2019). “e-Cigarette Use Among Youth in the United States, 2019). *Journal of the American Medical Association* Published online November 05, 2019. doi:<https://doi.org/10.1001/jama.2019.18387>

<sup>48</sup> US Department of Health and Human Services (2016). “E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General.” Available at: [https://www.cdc.gov/tobacco/data\\_statistics/sgr/e-cigarettes/pdfs/2016\\_sgr\\_entire\\_report\\_508.pdf](https://www.cdc.gov/tobacco/data_statistics/sgr/e-cigarettes/pdfs/2016_sgr_entire_report_508.pdf). Accessed 1 December 2019.

<sup>49</sup> Gotts p. 2.

<sup>50</sup> Youth Tobacco Use.

<sup>51</sup> Ministry of Health, State of Israel. Smoking Among Youth. Accessed 15 June 2020. Available at: [https://www.health.gov.il/English/Topics/KHealth/smoking/Pages/Teenagers\\_smoking.aspx](https://www.health.gov.il/English/Topics/KHealth/smoking/Pages/Teenagers_smoking.aspx).

<sup>52</sup> US DHHS 2016, p. 64.

<sup>53</sup> US DHHS 2016, p. 75.

by a ‘friend or family member’ (39.0%); (2) availability of ‘flavors such as mint, candy, fruit, or chocolate’ (31.0%), and (3) the belief that they are less harmful than other forms of tobacco such as cigarettes (17.1%).<sup>54</sup> Importantly, for adolescents and young adults, use of e-cigarettes is not associated with intentions to quit conventional cigarette smoking.<sup>55</sup>

Health effects of e-cigarette use for youth include (1) nicotine addiction; (2) developmental effects on the brain from nicotine exposure, which may have implications for cognition, attention, and mood; (3) e-cigarette influence initiating or supporting the use of conventional cigarettes and dual use of conventional cigarettes and e-cigarettes; (4) e-cigarette influence on subsequent illicit drug use; (5) e-cigarette effects on psychosocial health, particularly among youth with one or more comorbid mental health disorders; and (6) battery explosion and accidental overdose of nicotine.<sup>56</sup> While it is beyond the scope of this essay to delve into each of these issues deeply, suffice it to say that in addition to the risk for nicotine addiction and its consequences, e-cigarette use among youth and young adults put them at a wide variety of risks related to brain development and other toxicity-related morbidities and at a much greater likelihood of smoking traditional cigarettes. Additionally, e-cigarette aerosol may expose users to other harmful substances such as heavy metals, volatile organic compounds, and ultrafine particles that could harm the lungs.<sup>57</sup>

### Strengthening the ban on smoking

As we have said, in 1986, a teshuvah written by the late Rabbi Seymour Seigel that addressed the question “May an observant Conservative Jew continue to smoke cigarettes, in view of the fact that ‘cigarette smoking is dangerous to your health?’” was adopted by the CJLS.<sup>58</sup> Basing his answer on the rabbinic interpretations of Deuteronomy 4:15, “Take good care of your lives,” that

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<sup>54</sup> Tsai et al. (2018). Reasons for Electronic Cigarette Use Among Middle and High School Students – National Youth Tobacco Survey, United States, 2016.” *Morbidity and Mortality Weekly Report* 67.6: 196-200.

<sup>55</sup> US DHHS 2016.

<sup>56</sup> *Ibid*, p. 100.

<sup>57</sup> National Youth Tobacco Survey.

<sup>58</sup> There are conflicting records of the status of this teshuvah. In 2000, Aaron Mackler published a volume under the JTS imprint of collected writing of the CJLS in the area of bioethics, entitled “Life and Death Responsibilities in Biomedical Ethics.” In the introductory matter he writes that the teshuvot included “were prepared for the CJLS and are printed here by permission of the RA” (p. x). However, in introducing this particular teshuvah (p. 523), he writes: “This paper... was not discussed or voted upon by the CJLS and is not an official position of the CJLS... This paper... is included... as a tribute to his memory.” However, subsequently the CJLS and RA produced two volumes that included this teshuvah, *Proceeding of the CJLS 1986-90* and *Responsa 1980-90*, with publication dates of 2001 and 2005, respectively. The *Proceedings* volume, published under the aegis of Rabbi Kassel Abelson, chairman of CJLS, dates the teshuvah to 1986 and the introduction to it states: “The CJLS voted to approve it, but the record of the vote is not available.” It then goes on to use language identical to that of Rabbi Mackler, that “it is included in this volume as a tribute to his memory.” The 2005 *Responsa* volume, edited by Rabbi David Fine, reproduces the introduction that appeared in the *Proceeding* volume. [AIR: If I may be permitted to speculate on this anomaly. This teshuvah seems to have begun its life as an article (without the formal she’elah) which appeared in Tom McDevitt, ed., *Smoking: Is It A Sin?* (Pocatello, ID: Little Red Hen, Inc. 1980) and was presented to the CJLS as a teshuvah with a she’elah only in 1986. Rabbi Mackler seems to have assessed it as a private position of the chair (Rabbi Siegel was chairman of the Law Committee from 1973-1980). Rabbi Abelson appears to have assessed it as having the imprimatur of the committee when it agreed to include it in its proceedings. I do not believe that a full discussion of its contents was had at that time.]

forbid one from doing anything that endangers one's life or the lives of others,<sup>59</sup> Rabbi Siegel reached the following conclusion:

Scientific evidence has now established beyond doubt that smoking, especially cigarette smoking, is injurious to our health. It is now evident, too, that the non-smoker can be harmed when he/she has to suffer the smoke of those who use tobacco. The smoking habit is dirty, harmful, and antisocial. It would, therefore, follow that Jewish ethics and Jewish law would prohibit the use of cigarettes. Smoking should, at least, be discouraged in synagogues, Jewish schools and in Jewish gathering places. The rabbinate and community leaders should discourage smoking. This would help us live longer and healthier. In doing so, we would be fulfilling our responsibilities to God and humanity.<sup>60</sup>

In the decades that have passed since that teshuvah was written, evidence of the harm of smoking any form of tobacco and its link to fatal diseases has increased greatly, as have the laws in various countries concerning banning smoking in public places, requiring warnings to appear on cigarette cartons and prohibiting cigarette advertising.<sup>61</sup>

Siegel also cited two other rabbinic concepts in support of his ruling: that danger to life is of greater moment than a prohibition (חמירה סכנתא מאיסורא),<sup>62</sup> and that one does not rely on miracles (אין סומכין על הנס).<sup>63</sup> That said, Rabbi Siegel shied away from the full implications of his halakhic findings, and pronounced only that “smoking should be discouraged... in Jewish gathering places”. We need to step up and state plainly that smoking is prohibited.<sup>64</sup> The findings above

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<sup>59</sup> It is clear that there must be a threshold of risk below which activities are permitted, for we undertake a certain level of risk in our everyday activities. Yet we prohibit other risky behaviors. But this proves to be a tricky, subjective threshold to define. The gemara on Shabbat 129b describes such permissible risk as that which “many are accustomed to.” Others draw a distinction between where the harm is small or unlikely versus where it is great or likely. [Moshe Feinstein, Igrot Moshe, Hoshen Mishpat part II, no. 76. See Abraham Steinberg, Encyclopedia of Jewish Medical Ethics, Vol. 3, pp.831-833 and Dovid Cohen, Evaluating Risk, at [https://www.crcweb.org/kosher\\_articles/evaluating\\_risk.php](https://www.crcweb.org/kosher_articles/evaluating_risk.php), accessed 6/26/2020 (with thanks to Rabbi Susan Grossman for providing this reference)]. Without needing to define the precise threshold, the statistics which form the first part of this paper are here to establish that smoking is firmly in the prohibitible category. See further note 61.

<sup>60</sup> See note 2 and appendix.

<sup>61</sup> For many years there were voices in the Halakhic world who sought to allow smoking despite misgivings, citing the principle that God protects the simple (׳ שומר פתאים – Ps. 116:6, Shabbat 129b, Rabbi Moses Feinstein, Igrot Moshe, Yoreh Deah II, #49). David Bleich, in an article in 1977 (Tradition, 16.4 summer 1977, pp. 130-133) supports this, citing the reason given in the gemara there that “many are accustomed to it” and the additional reason that one does not put oneself in immediate danger. In a letter in the Rambam Maimonides Medical Journal 10.4 (Oct. 2019) Rabbi Yehuda Spitz makes the cogent observation that in a world that prints health warnings on packages of cigarettes, people can no longer claim that safe harbor, but then demurs as to whether it might yet be claimed with regard to e-cigarettes. We are content, however, that that justification cannot be applied today with regard to any smoking product. For a fuller review of halakhic opinions about smoking, see the article “Smoking” by Abraham Steinberg, Encyclopedia of Jewish Medical Ethics, Vol. 3, pp. 971-977.

<sup>62</sup> Hullin 10a, cited in a Halakhic note by Moses Isserles to Shulchan Arukh, Yoreh Deah 116.5.

<sup>63</sup> Shabbat 32a, Taanit 2b. See Isserles, there, at the end of his comment.

<sup>64</sup> This conclusion has been reached as well and extensively supported by the Va’ad Halacha of the Masorti Movement in a teshuvah by David Golinkin in Responsa of the Va’ad Halakha of the RA of Israel (Vol. 4, 5750-5752 (1992) by the Va’ad Halacha of the RCA [Rabbinical Council of America] in a teshuvah dated 4 Tammuz 5766, June 30, 2006, “The Prohibition of Smoking in Halacha,” available at

convince us that e-cigarettes are not without health risk and should also be prohibited except when used as originally designed as a short-term mechanism for cessation of smoking. Similarly, cigars and pipes, though probably less injurious than cigarettes, fall within the purview of this prohibition because they are themselves injurious and at very least should be included under color of *lo plug rabbanan*, that with regard to prohibitions the rabbis do not entertain fine distinctions and probably as well under the prohibition of *lifnei iver*, which we discuss below in the context of sale of tobacco products.<sup>65</sup>

Nevertheless, the Conservative Movement recognizes in general, and here in particular with regard to an addictive behavior, that it may not be immediately possible for those “along the way” to fulfill all mitzvot to their fullest. We hope that in time and with effort everyone will be able to come into compliance with this prohibition.<sup>66</sup>

### Selling tobacco products and other nicotine delivery devices

The Torah specifically prohibits not only causing direct harm to others, but also enticing them to act to their own detriment. This is the rabbinic understanding of the Biblical prohibition “One must not put a stumbling block before the blind” (Leviticus 19:14). Sifra, the early Tannaitic midrash to Leviticus, set the tone for the broader interpretation of this verse. It is not to be understood literally, rather “the blind” is interpreted as “someone who is blind to the matter.” (עוור בדבר, Sifra Kedoshim Parashah 2.14). Thus it is forbidden to fool someone who does not understand or know better into believing something that is harmful to him or untrue. This verse is also interpreted by the Sages as specifically meaning that it is forbidden to place temptation before someone, such as placing wine before a Nazir who is forbidden to drink it. This injunction appears in the Talmud as well:

Rabbi Nathan said: How do we know that a man must not hold out a cup to a nazirite or the limb taken from a living animal to a Noahide? Because it is said, ““One must not put a stumbling block before the blind.”<sup>67</sup>

According to many, this Torah prohibition is solely against facilitating the commission of a sin, but they then describe a lesser rabbinic prohibition against assisting another to sin, where one did not tempt or otherwise cause the transgression. Thus Maimonides, in his commentary to Mishnah Terumot 6.3, writes: One who misleads him or brings him to stumble, or instructed him to commit the sin... transgresses what God has said: ““One must not put a stumbling block before

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rabbis.org/pdfs/Prohibition\_Smoking\_Full\_Translation.pdf. And see Eliezer Waldenberg, Tzitz Eliezer 21.14 (1994) and Shmuel HaLevi Wosner, Shevet haLevi, 10.295 (no date, published 2002).

<sup>65</sup> “*Lo plug rabbanan* (H) – *The Rabbis did not differentiate.*” – Adin Steinsaltz, *The Talmud: The Steinsaltz Edition: A Reference Guide* (Random House:NY 1989). *Lifnei Iver*, in that permitting cigars and pipes while prohibiting other forms of smoking tobacco products is likely to lure the unwary to this harmful behavior. See the discussion of *livnei iver* that follows.

<sup>66</sup> The history of the growing cessation of smoking leads us to be unwilling to accept the argument that this is a ruling that cannot or will not be followed and that therefore this ruling should not be put in place ( אין גזרין גזרה ) על הציבור אלא אם כן רוב הציבור יכולין לעמוד בה – ein gozrin gezerah al ha-tzibbur ela im ken rov ha-tzibbur y’kholin la’amod bah – one does not place an edict upon the public unless most of the public can tolerate it). [AZ 36a, and see Menahem Elon, *HaMishpat Halvri*, vol. 2, pp. 442-443 and 616-617, and in English, *Jewish Law*, vol. 2, pp. 539-541 and 762-763].

<sup>67</sup> אמר רבי נתן: מנין שלא יושיט אדם כוס של יין לנזיר, ואבר מן החי לבני נח? ת"ל: ולפני עור לא תתן (ב-אזרח אבות). (מכשול).

the blind” if he caused the sin. Otherwise he transgresses God’s word: “Don’t lend your hand to the evil one” (Exod. 23:1) if he assisted the sinner.<sup>68</sup>

Moed Katan 17a uses that verse as the source of a law demanding taking precaution lest others stumble unknowing into sin.<sup>69</sup> It is quoted in Bava Metsia 5b as proof that one may not place a person (Jew or non-Jew) in a situation in which he will be tempted to commit a transgression. When Ravina heard that Rav Ashi sold wood to a fire temple (facilitating idolatry) (Nedarim 62b) he told him that he was violating the injunction to not put a stumbling block before the blind. Rav Ashi replied “Most wood is used for heating purposes.”<sup>70</sup> Rav Ashi, though agreeing that you are not allowed to do anything that will assist one to sin, asserts that one may assume that the wood was being used for an acceptable purpose. Moed Katan 17a brings the verse when teaching that a father may not strike his adult son, as Rashi explains, the son may rebel against the father and transgress the obligation to honor him.

Leviticus 19:14 is used in the same way in Mishnah BM 5:11 to indicate that if one offered to pay interest of any kind to someone for a loan he is guilty of transgressing “One must not put a stumbling block before the blind” since he is enticing someone to violate the Torah’s injunction against taking interest.<sup>71</sup> For the same reason one is forbidden even to put another to the test to see if he will violate the law. That too is placing a stumbling block before the blind (Kiddushin 32a). This interpretation of the verse was taken for granted and used whenever such a case was discussed. At the very least, then, this metaphoric understanding of the verse is rabbinic, if not scriptural, and is used constantly in halakhic literature.

Maimonides, in his Sefer HaMitzvot, cites Lev.19:14 as negative mitzvah number 299:

We are cautioned not to cause one to believe the wrong thing. If someone should ask your advice in something he does not understand, you are cautioned not to deceive him and lead him astray but tell him what you believe to be true, as it is said, “One must not put a stumbling block before the blind.” And the Sifra says, “...one who is blind to the matter” – if he comes to you for advice, do not advise him something that is not correct. And (the Sages) say that this includes one who helps another transgress or cause him to do so, for he comes to one who has been blinded by his desires – thus becoming blind – and encourages him in his error....And the Sages give many examples of that. The simple understanding of the verse is that cited at the beginning.<sup>72</sup>

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<sup>68</sup> "והמתעהו והמביא אותו לידי מכשול, או שציווהו על העבירה... עובר הוא על מה שאמר ה' 'ולפני עור לא תתן מכשול' אם גרם לעבירה. או שעובר על דבר ה' 'אל תשת ירך עם רשע' אם סייע לחוטא."

<sup>69</sup> Abaye proposes that verse as the source of the requirement that gravesites be marked so the kohanim can know to avoid them.

<sup>70</sup> רוב עצים להסקה נתנו.

<sup>71</sup> See also the interesting twist on tempting transgression by Rav Yehudah on that Mishnah, on Bava Metzia 75a.

<sup>72</sup> "והמצוה הרצ"ט היא שהזהירו מהכשיל קצתנו את קצתנו בעצה והוא שאם ישאלך אדם עצה בדבר הוא נפתה בו ובאה האזהרה מלרמותו ומהכשילו אבל תיישירהו אל הדבר שתחשוב שהוא טוב וישר. והוא אמרו יתעלה (קדושים יט) ולפני עור לא תתן מכשול ולשון ספרא לפני סומא בדבר, היה נוטל ממך עצה אל תתן לו עצה שאינה הוגנת לו. ולא זה אמרו שהוא כולל גם כן מי שיעזור על עבירה או יסבב אותה כי הוא יביא האיש ההוא שעוורה תאותו עין שכלו וחזר עור ויפתהו ויערזהו להשלים עבירתו... ודברים רבים מאד מזה המין יאמרו בהם עובר משום ולפני עור לא תתן מכשול. ופשטיה דקרא הוא במה שזכרנו תחלה"

Maimonides enlarges on this in his commentary to the Mishnah, Shevi'it 5:6, which gives a list of tools that a smith may not sell to others in the seventh year because they will be used to violate the laws of Shevi'it. He explains:

The Lord has said, "One must not put a stumbling block before the blind." The meaning of this is that one may not assist sinners who have become blinded by their desires and evil thoughts, in committing these sins and may not do anything that will bring them to this.<sup>73</sup>

Similarly Maimonides states in the Mishneh Torah, Hilkhot Rotzeah 12:14:

So too anyone who causes one who is blind to something to stumble by giving incorrect advice or who strengthens the hand of one who transgresses because he is blind and does not see the true path because of the desires of his heart – such a one transgresses a negative commandment, as it is said, "One must not put a stumbling block before the blind."<sup>74</sup>

Israel has taken a step in that direction by forbidding cigarettes to be publicly displayed for sale in small convenience stores and contemplating something similar for duty-free shops where the majority of cigarettes are sold. Such a step is obviously meeting opposition on the part of store owners and cigarette companies.<sup>75</sup>

Yet despite this strong emphasis on not causing transgressions or assisting wrong-doers, these general expressions were eased by the halakhic literature, in the Talmud itself and by halakhic decisors over time due to a desire to bring this vision of pious behavior into conversation with the real world. Like Abaye's concession mentioned above that if a valid use could be assumed then the prohibition could be lifted, the primary ruling by Rabbi Nathan that one should not hand wine to a Nazirite was immediately challenged by the Talmud there, determining that only if the Nazirite could not reach the cup himself was it truly prohibited. If he could get it for himself, no transgression (or perhaps a lesser rabbinic transgression – the commentators disagree) was occasioned.

Thus, in a responsum on this topic, the late Jerusalem sage Eliezer Waldenberg wrote:

Basically and generally there is here a Torah prohibition of "One must not put a stumbling block before the blind"... However, specifically, when we are dealing with an individual seller, when there are many stores both Jewish and non-Jewish that are unwilling to abide by Torah law, and they sell [smoking products]... the answer must be different.<sup>76</sup>

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<sup>73</sup> אמר ה' ולפני עור לא תתן מכשול, הכוונה בזה, שמי שעוורה אותו התאוה והדעות הרעות, אל תעזרהו על עורו ותוסיף להתעותו. ולפיכך אסור לסייע לעבריינים בעשיית העבירות, ולא לגרום למה שיביאם לכך..."

<sup>74</sup> "וכן כל המכשיל עור בדבר והשיאו עצה שאינה הוגנת או שחזק ידי עוברי עבירה שהוא עור ואינו רואה דרך האמת מפני תאות לבו הרי זה עובר בלא תעשה שני ולפני עור לא תתן מכשול."

<sup>75</sup> Ministry of Health, State of Israel. "Law on Restriction on Advertising and Marketing of Tobacco and Smoking Products." Accessed 15 June 2020. Available at:

<https://www.health.gov.il/English/Topics/KHealth/smoking/Pages/marketing-restriction.aspx>

<sup>76</sup> Eliezer Waldenberg, Tzitz Eliezer 21.14 (1994): "ביסודיות ובכלליות קיים בזה איסור תורה משום לפני עור לא תתן מכשול... אולם בפרטיות, כשאנו באים לדון על המוכר הפרטי כאשר מצוים הרבה חנויות נוספים יהודים ולא יהודים שאינם מוכנים לציית לדין תורה, ומוכרים, ... אזי התשובה על כך אחרת היא"

He proceeded to review several reasons that the prohibition in principle is not operative in fact.

1) Citing Avodah Zarah 6b, the sugya of Rabbi Nathan and passing wine to a Nazirite, he notes the Talmud's limitation of the prohibition that the aid must cause or allow the infraction to occur in order to be prohibited, whereas simply assisting, if the means for the transgression was otherwise available, would not be an infraction of *lifnei iver*.<sup>77</sup>

2) Citing Nedarim 62a, Abaye's justification for selling wood to an idolator, he notes the limitation is **such that** not only if it is likely that no transgression will occur, but even if it is only plausible, one is relieved of the burden of *lifnei iver*.

3) Citing Rambam, Hilkhot Shmittah 8.2<sup>78</sup>, he notes that if it is not certain that the transgression will follow, one is not in violation of *lifnei iver*. Here he asks how we can know that this is a regular smoker, and not a rare purchaser for light use that will not rise to the level of causing danger.

4) Citing Naftali Tzvi Yehudah Berlin (the Ntziv of Volozhin), he notes those who would find the Torah prohibition only if the offense happened directly upon the act of assistance, and not if it occurred later, as in our case of smoking it always will, for the **purchase** of cigarettes is not the cause of the health damages.<sup>79</sup>

5) Citing the Shakh in his commentary #6 to Yoreh Deah 151 and 19<sup>th</sup> century Hungarian sage Chaim Sofer, he acknowledges that there are those who exempt a person from a concern about assisting the sins of those who reject observance (מומר) (Shakh) – (and therefore would sin anyway) -- and by extension anyone who is actively committed to sinning (Sofer)<sup>80</sup> – such that

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<sup>77</sup> "הכא במאי עסקינן? דקאי בתרי עברי נהרא" (what are we dealing with? Where the two are standing on opposite sides of the river), with Rashi explaining: "דאי לא יהיב ליה לא מצי שקיל" (for if he does not hand it to him, he could not reach it).

<sup>78</sup> "זה הכלל כל שמלאכתו מיוחדת למלאכה שאסורה בשביעית אסור למכרו לחשוד, ולמלאכה שאפשר שתהיה אסורה" (This is the general principle: that which is specifically used for a purpose prohibited on the seventh year may not be sold to a suspect individual, [but that which is used] for a purpose that may be prohibited but may be permitted, it may be sold to a suspected individual).

<sup>79</sup> Meshiv Davar II, 31. מסתברא לחלק בין מסייע בשעת העבירה למסייע לפני מעשה העבירה. (It is reasonable to distinguish between assisting at the time of the transgression and assisting before the act of transgression).

<sup>80</sup> Shakh: "לפי עניות דעתי... כולי עלמא מודים להמרדכי ותוספות בפרק קמא דעבודת כוכבים דבעובד כוכבים או מומר שרי" (it seems to me ...that everyone agrees with Mordecai and Tosafot in the first chapter of Avodah Zarah that with regard to a gentile and an apostate [assisting their transgressions] is permitted). Sofer (Mahane Haim 1.45): "אם אין אנו יכולים למחות ביד עושי רשעה ובכל אופן יהיה עובר עבירה הנ"ל רק ישראל מקרב לו הנאתו אז בודאי אין על זה ערבות... ואין כאן איסור מסייע ידי עוברי עבירה וזה לדעתי ברור בכונת הש"ך" (If we cannot put a stop to wickedness and in any case this transgression will occur, just the Jew provides his pleasure, certainly there is no association there... and no prohibition of assisting a transgressor. This seems to me clearly to be the intention of the Shakh). [AIR: It has long been my contention that we must take the independent judgment of non-believers seriously, therefore not act as if we can dictate the behavior of others who may not believe as we do. The archtypical situation where this comes up is the question: May one invite a Jew to a shabbat dinner who will likely drive? Should this be prohibited on account of the prohibition of lifnei iver, that is, that one is enticing and thereby causing a transgression? The standard answers among those in the Orthodox community who are inclined to do so have been – it is permissible to transgress this one Shabbat in hopes that they will become observant and observe many more Shabbatot, or, my obligation is to offer that they may stay over at my house, if they choose not to... , or since the invitation is for the guest's greater benefit, the invitation cannot, over all, be considered a stumbling block. But I would suggest that the reason the invitation is permissible is that it is not substituting your action for

sales of cigarettes to those already committed to smoke, who are unlikely to listen to the urging that they stop, might not, by this interpretation, fall under the rubric of the prohibition of *lifnei iver*.

Thus Waldenburg concludes that, though in principle it would be appropriate to prohibit the sale or advertising of cigarettes, in practice one cannot issue such a ban, although:

יש להתריע בכלליות על איסור חמור של יצירת סיגריות ומכירתן למטרת עישון, וקל וחומר בנו של  
קל וחומר על האיסור שעוברים המעשנים בעצמם

One should loudly proclaim in general about the severe prohibition of manufacturing and selling cigarettes for the purpose of smoking, how much more so the severe prohibition that is being committed by those who themselves smoke.

Though he does not cite him to this effect, this ruling is consistent with the approach of Moses Isserles, who rules leniently in matters of *lifnei iver*, but concludes:

וכל בעל נפש יהמיר לעצמו.

Let all who are pious act strictly themselves.<sup>81</sup>

However, Waldenberg's arguments, though technically correct, are all rebuttable in the instant case because of the addictive nature of smoking. Addiction is defined as "the state of being enslaved to a habit or practice or to something that is psychologically or physically habit-forming, as narcotics, to such an extent that its cessation causes severe trauma."<sup>82</sup> The fact that addiction is cumulative, acting from the first contact, and unknowingly robs the individual of choice, implicates the act of causing addiction in the very basic definition of *lifnei iver*, of acting toward someone who is "blind to the matter." It can be said to cause the damage, which itself is only cumulative but which cannot easily be avoided once embarked on the path of addiction, not simply to aid smokers in their chosen path (1). Nor is the smoker a confirmed sinner. His dedication to smoking is a result of his smoking (5). Nor is there a plausible benign use of cigarettes that would parallel the justifiable sale of wood to an idolater (2). Because addiction draws one toward sin, the sale itself is implicated in the transgression that follows, so arguing that no damage is caused by the sale itself is specious (3, 4). Indeed, the very nature of *lifnei iver* contemplates a harmless action that leads to harm. Furthermore, the addictive nature of smoking distinguishes it in the realm of *lifnei iver* from other potentially harmful items whose sale we would not prohibit.<sup>83</sup>

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their choice, and since it is they who are choosing to drive, you cannot be held liable for the choice. This could then be another reason why one cannot, prima facie, be held liable for selling cigarettes to one who chooses to smoke. Since this was not among the arguments advanced by Rabbi Waldenberg, I have not included it in the list above, and since it is an idiosyncratic argument that I had not discussed with Rabbi Hammer, I have not included it in the body of this teshuvah.]

<sup>81</sup> Moses Isserles, Shulhan Arukh, Yoreh Deah 151.1.

<sup>82</sup> Definition by Dictionary.com, <https://www.dictionary.com/browse/addiction?s=t>, accessed Dec. 31, 2019.

<sup>83</sup> Rabbi Daniel Nevins asked of a previous draft of this teshuvah whether there is a threshold for public health concerns that would override the general freedom to sell legal products. After all, there is a vast obesity epidemic and much evidence that the sale of sugary drinks is a major factor, should we consider banning the sale of certain types of sweets? What about firearms? Fireworks? What is the limit? Rabbi Elliot Dorff asked similarly how this would apply to those who sell cars (which cause damage on the roads), or skis? The addictive nature of nicotine is

In view of this, selling cigarettes and similar products is forbidden because it comes under the heading of placing a stumbling block before the blind. Making cigarettes available for purchase is without doubt akin to placing wine before one who is forbidden to drink it. The Torah forbids us to do harm to ourselves, which smoking certainly does. Facilitating that is therefore forbidden. The only exception would be selling nicotine delivery devices that are appropriately regulated to adults for the purpose of stopping smoking cigarettes under doctor's advice and supervision.

Thus, since one is forbidden to harm oneself, making available to people that which will induce them to act in such a way as to cause themselves or others bodily harm and possibly even death is forbidden by Jewish law. The fact that these products will still be available elsewhere is irrelevant since they are adding to the cumulative addiction, thus in part causing the continuing stumbling block, not simply assisting in the current transgression.

Obviously, this will present a major problem for those whose livelihood depends upon the sale of cigarettes and other tobacco products. It may not be feasible for them to immediately make the change required, but in the long run there can be no excuse for continuing to knowingly contribute to the harm and even the death of others. The fact that the product will be available elsewhere does not excuse one from the requirement to avoid placing a stumbling block before the blind and beginning as soon as possible to make the changes necessary to do so. The decision of CVS to stop selling cigarettes should serve as an example to other retailers as well. Once fully regulated as a potential smoking cessation device, an exception would exist for selling e-cigarettes, but not before then.

### Advertising tobacco products

Clearly the same prohibition would apply to advertising cigarettes, tobacco and various substitutes. By creating or publishing such advertisements one is misleading others into believing that using these products is a good thing, when the very opposite is the truth and locking them into that negative trajectory through the power of addiction. The entire purpose of an ad is to entice someone to purchase the product, i.e., to use something that the Torah forbids one to use because of the harm that it causes.

Various countries and localities have different laws on this matter. Many prohibit all advertising, others permit certain limited forms. Israel, for example, permits advertisements in newspapers, although requiring that they include warnings about the dangers of smoking. Even the well-known Jerusalem Post frequently carries such advertisements. In doing so it is in violation of Jewish Law, which prohibits anything that is meant to tempt one into violating a Biblical prohibition such as causing oneself harm. Financial considerations are no excuse for participating in promoting products that cause death. The only exception would be for any product that is fully regulated as a potential cessation device, which is not currently the case.

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here proposed as an answer to those questions without addressing whether the extent or severity of the potential damage does itself form a legally valid reason to prohibit the sale of tobacco.

[AIR: This distinction of addictive behaviors from those amenable to individual choice serves also to distinguish the sabbath invitation (see note 80) which may be permissible by my argument of respect for individual choice from the sale of tobacco products that is here being prohibited.]

## P'sak

1. We prohibit the smoking of cigarettes and specify that this includes cigars, pipes and any other tobacco devices. We revise the Siegel Teshuvah's language that smoking should be "discouraged" by stating clearly that it is prohibited to all and *consequently* that it should be banned in synagogues and in all buildings connected to the Jewish community, and that rabbis should *make every effort* to persuade smokers to undertake the various methods offered today to stop smoking and to prevent youngsters from beginning to smoke, thus taking "good care" of their lives, as the Torah commands
  - a. Just as it is forbidden to smoke cigarettes or other forms of tobacco, so it is forbidden to use e-cigarettes and other nicotine substitutes (ENDS) unless one is using regulated products under the supervision of a health professional as a smoking cessation device. Other uses would be a violation of Deuteronomy 4:15: "Take good care of your lives," as interpreted by the rabbis, that forbids one from doing anything that endangers one's life or the lives of others.
2. It is forbidden to sell cigarettes or other forms of tobacco. So too it is forbidden to sell nicotine substitutes (ENDS) or to make them available except when specifically selling a regulated product with proven utility of curing cigarette addiction. Doing so is a violation of "One must not put a stumbling block before the blind" (Leviticus 19:14) as interpreted by the Sages in Sifra and elsewhere.
3. It is forbidden to advertise cigarettes, tobacco products or substitute products that can cause harm or addiction unless the product is fully regulated as a potential smoking cessation device. Otherwise this too is a violation of the command "One must not put a stumbling block before the blind" (Leviticus 19:14) as interpreted by the Sages in Sifra and elsewhere.

## Appendix I -- Smoking: A Jewish Perspective -- Rabbi Seymour Siegel (1986)

שאלה:

May an observant Conservative Jew continue to smoke cigarettes, in view of the fact that "cigarette smoking is dangerous to your health?"

תשובה:

"The Surgeon General Has Determined that Cigarette Smoking is Dangerous to Your Health." This sentence confronts us wherever we go. It is prominently displayed on all cigarette advertisements. It is printed on every package of cigarettes. It is repeated on radio and television. Nevertheless, smoking of cigarettes continues here and abroad.

Judaism expresses attitudes and values which are relevant to the question of cigarette smoking. There are definite directives about substances which are "dangerous to your health."

### **The Preservation of Health is a Mitzvah**

It is important, first of all, to explain the biblical attitude toward the maintenance of our own health. The basic attitude is expressed in Deuteronomy 4:15. "Take good care of your lives." This reflects the understanding basic to all biblical faiths, that life is a gift, a privilege given to us by the Creator. This means that we are bidden to guard, preserve and enhance our lives and the lives of others. To neglect our health, to willfully do something which can harm us, is not only to court disaster for ourselves but is also an affront to the One who gave us life. Therefore, the preservation of health is a mitzvah.

This idea is expressed most concisely by Moses Maimonides (1135- 1204) who is considered one of history's greatest physicians. Maimonides is accepted as one of Judaism's greatest scholars. Maimonides' legal code is called *Yad ha-Hazakah* (the Strong Hand). In the section dealing with "Murder and the Guarding of Life" he writes:

It is a positive commandment to remove any stumbling block which constitutes a danger and to be on guard against it. The sages have prohibited many things because they endanger one's life. If one disregards any of them and says "I am only endangering myself, what business do others have with me; or I don't care [if they are dangerous] I use them (that is, harmful things)," he can be subjected to disciplinary flogging.<sup>84</sup>

Maimonides reflects the Judaic ethos which sees life as not being the exclusive possession of the individual. A person must avoid harm to self, and must also avoid being a source of harm to others. One should not feel that if self-inflicted harm affects oneself, it is of no concern to the community. We are all part of each other. The community has a stake in the well-being of the community. Both the community and the individual have responsibilities to the Creator. Life is too precious deliberately to expose it to dangerous and harmful effects.

### **Danger to Life is Stricter than a Prohibition**

The Talmud states that a person is not permitted to wound himself.<sup>85</sup> The rabbis derive this law from the biblical admonition which sees the Nazarite who voluntarily deprives himself of the

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<sup>84</sup> MT, *Hilkhot Rotzeah* 11:4-5.

<sup>85</sup> B. *Bava Kama* 80a.

legitimate goods of the world as a sinner. They reason if a person who deprives himself of wine is considered in a bad light, certainly one who causes himself to suffer (by bodily harm) is culpable in God's eye.

Another classical writer, Rabbi Moses Isserles (1525-1572), whose notes on the Shu/ban Arukh are seen as binding, writes:

... one should avoid all things that might lead to danger because a danger to life is stricter than a prohibition. One should be more concerned about a possible danger to life than a possible prohibition ... And it is prohibited to rely on a miracle or to put one's life in danger.<sup>86</sup>

The concept that Rabbi Isserles expounds: "a danger to life is stricter than a prohibition ... One should be more concerned about a possible danger to life than about a prohibition" is of special importance. Judaism exhorts the Jew to be careful in avoiding anything that might be prohibited according to ancient Jewish prescription. Therefore, an observant Jewish person would make sure that he does not eat anything about which there would be the slightest suspicion that anything forbidden, for example swine's flesh, might be in the food he eats. Rabbi Isserles says that he should be even more careful about eating or taking into his body anything that might be dangerous. The application of this exhortation to the problem of cigarette smoking seems obvious.

### **Do Not Rely on Miracles**

It is also interesting to note that Rabbi Isserles says: "In these matters it is forbidden to rely on miracles." This means that an individual should not deceive himself in thinking that, although others are harmed, he might escape the consequences since he possesses special merit or because he is entitled to special divine providence. The sources are clear: avoid endangering your health; do not assume God will help you avoid dangerous consequences. It is a divine commandment to preserve the health of your body and spirit.

These exhortations apply even when the risk appears to be minimal. This is illustrated in the following way. In ancient times, people were warned not to drink water that had been left uncovered for a period of time. The water might have become contaminated in some way. The rabbis prohibited the drinking of "uncovered water." What if the risk is minimal? The rabbis ruled: "If a jar was uncovered, even though nine persons drank of its contents without any fatal consequences, the tenth person is still forbidden to drink from it."

Even a minimal risk should not be taken. Life is too precious; health is too important; well-being is too vital to be risked.

### **Avoid Risk**

The attitude of Judaism toward possible risk to health can be summed up:

- (1) Life is precious. It is given to us as a trust. We may, therefore, not do anything which would possibly impair our health, shorten our lives, or cause us harm and pain.
- (2) As we may not do this to ourselves, so, of course, we may not do harm to others. All human lives are precious in God's sight.

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<sup>86</sup> Rama, Shulhan Arukh YD, 116:5

(3) The responsibility to avoid danger to ourselves or others applies even when it is not certain that harm will ensue. We are forbidden even to take the risk.

(4) The harm is to be avoided even if the bad effects are not immediately evident, but will show up in the long run.

## **CONCLUSION**

In regard to smoking, there is little difficulty in applying these principles to the question of smoking. Scientific evidence has now established beyond doubt that smoking, especially cigarette smoking, is injurious to our health. It is now evident, too, that the non-smoker can be harmed when he/she has to suffer the smoke of those who use tobacco. The smoking habit is dirty, harmful, and antisocial. It would, therefore, follow that Jewish ethics and Jewish law would prohibit the use of cigarettes. Smoking should, at least, be discouraged in synagogues, Jewish schools and in Jewish gathering places. The rabbinate and community leaders should discourage smoking. This would help us live longer and healthier. In doing so, we would be fulfilling our responsibilities to God and humanity.

There is one aspect of this question which is of special interest. According to Jewish law, the observance of the Sabbath is of paramount importance. One of the ten commandments exhorts us to cease from labor every seventh day. The Rabbis have long and complicated discussions of what is "work." The kindling of fire and the extinction of fire is forbidden on the Sabbath. Thus, from sundown Friday to sundown Saturday, Jewish law forbids smoking. I have personally known many people who were heavy smokers who did not touch tobacco the entire Sabbath day. What is remarkable is that in most of these cases, all smoke hunger ceases during the Sabbath day. It is only as the sun begins to wane and the end of the Sabbath day approaches that the yearning for tobacco returns. I myself experienced this phenomenon when I was a habitual smoker. As far as I know, scientists have not fully investigated the fact that the religious prohibitions against smoking on the Sabbath seems to distract habitual smokers from their addiction. It means that determination and commitment can overcome the desire to smoke.

Surely, religious people seek to do God's will. When they accept the idea that it is forbidden to smoke on the Sabbath day, they are freed from the compulsion. We fervently hope that the considerations of the danger to health by smoking might become internalized so that those who now shorten their lives by the use of cigarettes will hear God's command and will stop smoking.

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Appendix II -- Shevet haLevi, 10.295 -- Shmuel HaLevi Wosner (no date, published 2002).

אשר נשאלתי לחוות דעתי העני' דעת תורה בענין מנהג העישון סיגרים וסגריות וכו' אשר כידוע הם המזיקים הגדולים לבריאות הגוף, הריני לרצונכם בקיצור אמרים.

א. לשון הרמב"ם פי"א מהל' רוצח ושמירת הנפש ה"ה, הרבה דברים אסרו חכמים מפני שיש בהם סכנת נפשות וכל העובר עליהם ואומר הריני מסכן בעצמי ומה לאחרים עלי, או איני מקפיד על כך מכין אותו מ"מ.

ב. ובכלל הדברים מיני מאכל ושת' שאסרו חכמים מפני ספק סכנת נפשות שחשבם שם הרמב"ם, ובריטב"א שבועות כ"ז כתב, המאכלים המזיקים הגוף הם בכלל איסור תורה לאכלו משום השמר לך ושמור נפשך מאד.

ג. ובחי' חתם סופר ע"ז ל' אחרי שהעתיק לשון רמב"ם הנ"ל כתב, ומוטל על החכמים להשגיח על זה מקרא דברים י"ט והי' עליך דמים ע"פ ש"ס מו"ק ה', דאם לא השגיחו חכמים על זה וכיו"ב שאז כל הדמים שנשפכו ע"י שלא עשו או שלא הזהירו ע"ז מעלה הכתוב עליהם כאילו הם שפכו ח"ו.

ד. ולענינינו למדנו, דעל חכמי הזמן להריע ולעורר על הסכנה העצומה המונחת בעישון סיגריות וכו' דבר שנתברר בחקירה ודרישה למעלה כל ספק שמאות אלפים מתים טרם זמנם בעישון סיגריות, וכן ידוע מאד שגורם גדול למחלה החמורה בריאות וגם בלב, ועוד הרבה כיוצא בזה, כאשר יוצא מדו"ח הרופאים מכל מדינות העולם.

ה. ע"כ ברור להלכה דאיסור גמור להתחיל בעישון בימי הבחורות וגיל צעיר, ועל ההורים ומורים ומחנכים מוטל חוב גמור ע"פ התורה למנעם מזה.

ו. כל מי שכבר הרגיל עצמו למנהג לא טוב הזה, ישתדל מאד למען עתידו לרדת מזה בהדרגה ואז טוב לו.

ז. חלילה לעשן במקומות ציבורים שגם הריח בעצמו הוא מזיק גמור כאשר נתבאר בחקירה.

ח. היות שכאמור המנהג הרע הזה הוא מזיק עצום, על העתונים מעתה לא לפרסם פרסום מודעות מסחריות עבור המעונינים לכך למען בצע כסף.

ט. לאור הדברים החמורים האמורים למעלה, כל היכול למנוע עצמו שלא לעזור למעשנים, מחויב לעשות כן עפה"ת.

כל השומע לדברינו ישכון שאנן ובוטח ויזכה להאריך ימים בשמרו על נפשו ונפש משפחתו וסביבו עפה"ת - ויזכה להבטחת תוה"ק כל המחלה וגו' לא אשים עליך כי אני ה' רופאך - ולמען ירבו ימיך ויוסיפו לך שנות חיים.

ע"ז בעה"ח למען טובת עמינו הק' מצפה לרחמי ה'

Whereas I have been asked to express my opinion of the Torah's view of the habit of smoking cigars and cigarettes and the like, which are known to be greatly harmful to the health of the body, I hereby oblige you in brief.

1) This is the formulation of Rambam in chapter 11.5 of the Laws of a Murderer and Protecting Oneself: There are many things that the sages prohibited because they are dangerous to life, and whoever transgresses, saying: I am endangering myself. What business is it of anyone else? Or I do not care – he is flogged for rebelliousness.

2) Among these things are types of food and drink that the sages prohibited because of danger to life that Rambam enumerated there. In Ritba's novella to Shevuot 27 he wrote: The foods that harm the body are included in the prohibition of the Torah to eat them, based upon the verse "Be cautious and protect yourself very carefully" (Deuteronomy 4:9).

3) In the novella of Hatam Sofer to Avodah Zarah 30, after he has cited this Rambam he writes: It is incumbent upon the sages to see to this, based upon the verse "it will be considered a blood-guilt" (Deuteronomy 19:10) as presented in Moed Katan 5a, for if the sages did not see to this and the like, then all the blood that is spilled because they did not attend to and did not warn about this, scripture assigns to them as if they had spilled it, God forbid.

4) So in this matter, that it is necessary for the sages of this age to proclaim loudly and rally others about the enormous danger which is found in smoking cigarettes, something that has been documented by research beyond all doubt that hundreds of thousands die before their time due to smoking cigarettes, and it is well known that it is a large factor in serious lung and heart ailments and many other ailments, as is evident from doctors' reports from all parts of the globe.

5) Therefore it is clear that as a matter of law that there is a complete prohibition against starting to smoke at a young age and that a large obligation based on Torah devolves upon parents, teachers and educators to prevent them.

6) Whoever has already grown habituated to this bad habit should endeavor strongly for the sake of his future to step down from this in stages, which will be good for him.

7) It is most unfortunate to smoke in public places, for the smell itself causes definite harm, as has been proven by research.

8) Since, as has been said, this bad habit causes enormous harm, newspapers should no longer publish commercial advertisements aimed at those interested for the sake of profit.

9) In light of the severe things said above, whosoever can restrain himself from assisting smokers is obligated to do so by the Torah.

Whoever heeds our words will rest peaceful and secure and merit length of days by protecting his life and the lives of his family and his environment in accordance with the Torah – and he will merit the holy Torah's promise: "Every ailment... I will not bring down upon you, for I, the Lord, are your healer" (Exodus 15:26) and in order that "your days will be extended, adding to you years of life" (Mishlei 9:11).

We have signed this for the furtherance of our holy people. Hoping for divine mercy.