

**HM 427:8.2005**  
**Compulsory Immunization in Jewish Day Schools**

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*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* .*להשיטו במים*. -- “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 (ללמדו תורה) as well as knowledge necessary to securing a livelihood (ללמדו 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. שׂמא יפּרוּשׁ בספינה ותטבע ויסתכן אם אין יודע לשׁוּט -- “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

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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).

century.”<sup>11</sup> State-mandated immunization, however, began in the early nineteenth century.

The United States Supreme Court established the right of the states to compel citizens to submit to vaccination in a 1905 case, *Jacobson vs. Massachusetts*. The case originated with Jacobson’s refusal to comply with a Cambridge city ordinance requiring residents to be vaccinated against smallpox. He was fined \$5.00. Even in 1905, the court decision observed:

“For nearly a century most of the members of the medical profession have regarded vaccination, repeated after intervals, as a preventive of small pox; that, while they have recognized the possibility of injury to an individual from carelessness in the performance of it, or even in a conceivable case without carelessness, they generally have considered the risk of such an injury too small to be seriously weighed as against the benefits coming from the discreet and proper use of the preventive.”<sup>12</sup>

Students of Jewish tradition should note with interest and satisfaction the jurisprudential origins of the Massachusetts law affirmed by the U.S. Supreme Court, in early American Covenant Theology, rooted firmly in the Hebrew Bible.

“In the Constitution of Massachusetts adopted in 1780 it was laid down as a fundamental principle of the social compact that the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for ‘the common good’ and that government is instituted ‘for the common good, for the protection, safety, prosperity, and happiness of the people, and not for the profit, honor, or private interests of any one man, family, or class of men.’”<sup>13</sup>

Noting the danger to the public weal inherent in Jacobson’s failure to immunize, and his consequent potential as a source of contagion, the Supreme Court described the alternative to compulsory vaccination: “The spectacle would be presented of the welfare and safety of an entire population being subordinated to the notions of a single individual who chooses to remain a part of that population.”

This issue was not new to Massachusetts in 1905. Boston had sought to impose vaccination as a condition of enrollment in public schools as early as 1827. The commonwealth enacted a state-wide school vaccination law in 1855, followed by New York in 1862, Indiana in 1881, and Illinois and Wisconsin in 1882.<sup>14</sup> Currently, all fifty states require immunization against childhood disease as a condition of school enrollment.<sup>15</sup> Every state in the union requires DTP<sup>16</sup> (diphtheria/tetanus/pertussis) and MMR<sup>17</sup> (measles/mumps/rubella) vaccines. Every state, with the single exception of

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11 James G. Hodge, Jr., “School Vaccination Requirements: Legal and Social Perspectives,” NCSL State Legislative Report (National Conference of State Legislatures) 27:14, August 2002, p. 1.

12 See 197 U.S. 11; 25 S.Ct. 358 (1905).

13 Ibid.

14 Hodge, Op. Cit., p. 2.

15 For detailed data on state requirements, see Hodge, pp. 4-6.

16 Eleven states permit the alternative use of DT (Diphtheria-Tetanus Toxoid).

17 Eight states require measles and rubella vaccines, but not the mumps vaccine.

Oklahoma, also requires immunization against polio (OPV or IPV).<sup>18</sup> Thirty-one states require vaccination against hepatitis B, while thirty require the more recently developed varicella “chicken pox” vaccine. Only six states require the Hib (*haemophilus influenzae* type B) vaccine.

Predicating admission to public and private schools alike on the currency of childhood immunization is thus “a core component of vaccination policy in the United States.”<sup>19</sup> The situation in Canada is quite different.<sup>20</sup> The Canadian Constitution precludes government-mandated immunization. Nevertheless, three provinces have “legislation or regulations under their health protection acts to require proof of immunization for school entrance.”<sup>21</sup> While these laws do not constitute state-mandated immunization, they require parents formally to refuse or, alternatively, they serve as a reminder to willing parents to immunize their children. Ontario and New Brunswick require immunization against diphtheria, tetanus, polio, measles, mumps, and rubella. Manitoba requires only measles vaccination. As a telling consequence of Canada’s legal bars to mandatory immunization, “all provinces and territories have regulations that allow for the exclusion of unvaccinated children from school during outbreaks of vaccine-preventable diseases.”<sup>22</sup>

The impact of state-mandated immunizations on public health has been profound. In addition to the eradication of small pox, no wild polio was reported in the United States for 25 years. This remarkable record of prevention remained intact until 2005, when four cases of polio were diagnosed in Minnesota.<sup>23</sup> It was reported -- coincidentally, on Yom Kippur 5766 -- that all four victims were Amish, and had declined immunization, as is the frequent custom in their religious community. Furthermore, “it is possible that by the end of this decade, measles and varicella, two of the most infectious and previously universal diseases of children, with massive levels of morbidity and significant mortality, may become of historical interest only.”<sup>24</sup> Already, “the increasing coverage of young children with varicella vaccination, partly due to daycare and school entry requirements, has led to documented decreases in varicella disease incidence of 71% to 84%, affecting all age groups.”<sup>25</sup>

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18 IPV (inactivated polio vaccine) is the injection recommended in the United States today. OPV is the oral polio vaccine. OPV is considered better at containing the spread of the disease, but is believed to have a slightly greater risk of causing polio: one in 2.4 million. IPV can not cause polio. See “Vaccine Information Statement,” (U.S. Dept. of Health and Human Services/CDC); <http://www.cdc.gov/nip/publications/VIS/vis-IPV.pdf>

19 Hodge, Op. Cit., p. 1.

20 “Canadian National Report on Immunization, 1996” (updated, 2002), Canada Communicable Disease Report, volume 23S4-May 1997 (Public Health Agency of Canada).

21 Ibid.

22 Ibid.

23 “Polio Cases Found in Minnesota,” The Wall Street Journal, October 13, 2005. See also “Poliovirus Infections in Four Unvaccinated Children: Minnesota, August-October 2005,” Centers for Disease Control, MMWR Dispatch, October 14, 2005/54:1-3.

24 Lawrence D. Frenkel, M.D., “Live Viral Vaccines in the Control of Highly Infectious Diseases: Measles and Varicella,” Pediatric Annals, 33:9, September 2004, p. 589. The prospect of eradicating varicella in the immediate future through wide-spread immunization would resolve the valid concern that childhood vaccination merely postpones infection until adulthood, when the disease is far more dangerous.

25 Ibid.

Conversely, the United States' "measles resurgence between 1989 and 1991, with more than 100,000 cases and 120 deaths, was a result of low vaccine coverage in pre-school children."<sup>26</sup> An estimated 530,000 measles deaths occurred world-wide in 2003. Owing to aggressive World Health Organization (WHO) vaccination programs, this represents a significant improvement over the 873,000 such fatalities in 1999.<sup>27</sup> Childhood immunization has been credited with preventing 3.2 million deaths from measles and 450,000 cases of polio each year.<sup>28</sup>

Similarly, pertussis (whooping cough) has returned to epidemic levels in the United States due, in significant part, to declining vaccination rates.<sup>29</sup> 18,957 cases were reported in 2004, almost double the 9,784 cases in 2003. In the 1980's the annual average was 4,400 cases. "Whooping cough was one of the leading causes of infant mortality before the vaccine was introduced in the 1940's, and it still kills almost 300,000 children annually worldwide... Medical experts predict that the number of pertussis cases will continue to grow rapidly."<sup>30</sup> Dr. Margaret Cortese, a medical epidemiologist with the CDC's National Immunization Program, discusses the imminent danger of declining vaccination: "The pool of susceptible people has built up so that it takes only one sick person to start a serious outbreak."<sup>31</sup> In the current epidemiological climate, timely immunization of infants and children is critical. "Delaying inoculations by even a month or two can make children more vulnerable."<sup>32</sup>

The benefits and goals of immunization transcend the personal protection afforded the individual recipient. Each immunized individual contributes to achievement of "herd immunity." This term signifies the prevalence of immunization at which a community or society -- some members of which remain unimmunized -- is likely to break an infectious disease's chain of transmission. By establishing "herd immunity," a community decreases the possibility that it will develop or sustain an epidemic of the disease, even with less than 100% immunization. The more densely populated an area, the higher the threshold required to establish herd immunity. Densely populated urban centers may require 99% immunization to assure herd immunity, while rural populations may require 94% or 95%.

It should be noted that actual immunity levels in a community are somewhat lower than recorded rates of vaccination, as some immunizations are ineffective or only partially effective on certain patients. Similarly, students who spend long hours in close proximity and protracted contact with each other -- even if drawn from a rural environment -- require a higher rate of immunization than the general population in order to reduce the likelihood of a susceptible child coming into contact with an infected

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26 Ibid., p. 586.

27 See Roxanne Khamsi, "Measles death toll plummets," news@nature.com, March 4, 2005.

28 See R. Kim-Farley et al., "Global Immunization," *Annual Review of Public Health*, 13 (1992), pp. 223-228.

29 Kate Murphy, "Enduring and Painful, Pertussis Leaps Back," *New York Times* ("Science Times"), February 22, 2005, pp. F5ff.

30 Ibid., p. F10.

31 Ibid., p. F5.

32 Ibid., p. F10.

school-mate. Since the immunity conferred by vaccination is necessarily imperfect and varies in level from patient to patient, even immunized children are placed at some risk when herd immunity is compromised, especially in the closed environment typical of a school... and, in particular, within the still more intimate nature typical of a Day School.

Immunization of a child thus provides the recipient with protection from infectious and life-threatening disease. Children's personal immunity in turn bestows a further benefit on others in the community, both by effectively removing the immunized students as sources of contagion, and by contributing to "herd immunity" -- thereby disrupting the chain of transmission and reducing the likelihood of epidemic.

Conversely, failure to immunize places a child (and the child's immediate contacts -- whether or not they have been immunized) at grave personal risk. The child's resulting susceptibility reduces "herd immunity," compounding the danger to the surrounding community. Refusal to immunize also exploits the benefits of herd immunity, protecting one's child through others' submission to vaccination (with its inherent if eminently reasonable risks) while taking no responsibility for the health and safety of others.

State-mandated immunization as a prerequisite to enrollment in school thus enhances the health of individual students, provides for the safety of the broader community, and helps to establish social equity and civic responsibility.

## **II. Objections to Immunization**

Conventional medical wisdom dictates that "timely vaccination is a basic and necessary requirement for appropriate pediatric care."<sup>33</sup> Nevertheless, a substantial "anti-vaccine" movement has emerged, articulating a number of objections to the practice of routine immunization of children. For example, under the chapter sub-heading "Mass Immunization = More Illness," one commentator observes, "Since the late 1950's, when mandatory mass vaccinations started in the United States, there has been an increase in the incidence of immune system and neurological disorders."<sup>34</sup> Perhaps the most persistent and frightening allegation has been the proposed correlation between vaccines (particularly MMR) and the onset of autism.<sup>35</sup> It has been more specifically alleged that autism is caused by thimerosal, a preservative used in some vaccines,<sup>36</sup> though contrary

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33 Gary S. Mirkin, M.D., et al., "Immunization Policy" (MDs4kids, 2004). See <http://mysite.verizon.net/bizeg2z8/vaccinepolicy.htm>. The pediatric partners' policy states further: "We feel so strongly about this, that, as a group, it is our policy to dismiss a family from our practice if we are unable to appropriately vaccinate a child."

34 Stephanie Cave, M.D. with Deborah Mitchell, What Your Doctor Might Not Tell You About Children's Vaccinations (Warner Books/New York, 2001), pp. 24-25.

35 A neurological disease, of uncertain etiology, characterized by delay in understanding and using language, difficulties with social interaction, a narrow range of interests, and use of repetitive actions.

36 For a discussion of mercury exposure and allergic reactions related to thimerosal, see Mark R. Geier, M.D. and David A. Geier, "Thimerosal in Childhood Vaccines, Neurodevelopment Disorders, and Heart Disease in the United States," Journal of American Physicians and Surgeons, 8:1, Spring 2003, pp. 6-10. It is here recommended that the need for any vaccine preservative be eliminated by, for example, the exclusive use of single dose vials.

to the popular misconception, never in MMR.<sup>37</sup> In point of fact, “the preponderance of evidence tells us that autism happens to our children before birth, not after... Embryologist Patty Rodier’s work puts the date for some or many cases of autism as early as days 20 to 24 after (*sic*) gestation.”<sup>38</sup> The scientific evidence against a correlation between vaccination and autism (as, too, with ADHD and speech or language delay) appears overwhelming. The Centers for Disease Control and Prevention (CDC) reports that the Institute of Medicine (IOM) found no correlation after rigorously researching the theory. The IOM’s Immunization Safety Review Committee examined:

“five new epidemiological studies examining thimerosal-containing vaccines and autism, which consistently provided evidence of no association, despite the fact that they utilized different methods and examined different populations (in Sweden, Denmark, the United States and the United Kingdom); and nine controlled observational studies, three ecological studies and two studies based on passive reporting system in Finland which consistently showed evidence of no association between the MMR vaccine and autism. The committee also examined several other studies which reported findings of associations between vaccines and autism, but described these as methodologically flawed, having non-transparent analytic methods (making their results uninterpretable), and/or non-contributory with respect to causality.”<sup>39</sup>

A study conducted in Yokohama, Japan demonstrated that diagnoses of autism spectrum disorders (ASD) “most notably rose dramatically”<sup>40</sup> among children born in 1993 -- among whom “not a single vaccination was administered.” In the five preceding years, ASD diagnoses mounted even as vaccination rates dropped precipitously. The study concludes that exposure to immunizations “cannot explain the rise over time in the incidence of ASD” and that withholding vaccines “cannot be expected to lead to a reduction in the incidence of ASD.”

A number of factors may contribute to the perceived rise in autism rates following introduction of routine immunization of infants. Children with autism typically show no sign of the condition for 12 to 18 months. Regardless of whether they have been vaccinated, these children then experience a developmental plateau or regression some time after the first birthday. Since immunizations are scheduled and administered around this same time frame, parents of vaccinated children have at times concluded erroneously, *post hoc, ergo propter hoc*: “Onset of autism follows immunization, therefore autism is because of immunization.”<sup>41</sup> Their logic is flawed: “A third world child with autism who received no vaccinations of any kind might show exactly the same pattern.”<sup>42</sup> It is sadly

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37 “Thimerosal in Vaccines,” (U.S. Food and Drug Administration, Center for Biologics Evaluation and Research), <http://www.fda.gov/cber/vaccine/thimerosal.htm#t1>.

38 Eric London, M.D., “The ABCs of MMRs and DTPs: Is There an Association Between Vaccination and Autism?” *NAARRATIVE* (Journal of the National Alliance of Autism Research), No. 3, Fall 1998, p. 1.

39 “Vaccines and Autism: Important Conclusions from The Institute of Medicine: Information for Health Care Professionals,” (CDC/Department of Health and Human Services, 2004), p. 1.

40 Hideo Honda, et al., “No effect of MMR withdrawal on the incidence of autism: a total population study,” *Journal of Child Psychology and Psychiatry*, [publication forthcoming; online publication: February 18, 2005].

41 *Post hoc, ergo propter hoc*: Latin, literally: “This follows that, therefore this is because of that.”

42 London, *Op. Cit.*, p. 2

understandable that a parent would prefer to identify an external cause for a beloved child's developmental crisis, rather than confront genetic causation, or attribute such a setback to mere chance.

A Mayo Clinic study has suggested a number of other causes for the increase in autism. These include "improved awareness, changes in diagnostic criteria and availability of services, not environmental factors or immunizations."<sup>43</sup> Changes in diagnostic criteria suggests that more cases of children with autism can be identified, and that a broader range of conditions and symptoms has been included on the "autism spectrum" -- not that more children have actually manifested these symptoms.

It seems clear from the research of the Mayo Clinic, CDC, and numerous other studies, that allegations of a causal relationship between vaccines and autism (and other maladies) represent a far greater health threat than the immunizations they impugn. "The decreased immunization rates in England and Ireland, secondary to the inappropriate linking of autism with measles vaccine, were soon followed by 308 reported cases of measles in England and a more major epidemic in Ireland."<sup>44</sup>

The preponderance of scientific evidence not only eliminates vaccines as a cause of autism, it suggests that the MMR vaccine has in fact spared children from the condition. Congenital rubella syndrome, a known cause of autism, occurs when a woman contracts German measles (rubella) during pregnancy. Routine immunization has virtually eradicated German measles and, therefore, untold cases of autism in the children of women who might otherwise have become infected.<sup>45</sup>

Opposition to vaccines has also been voiced by advocates and practitioners of alternative health care disciplines, including homeopaths and chiropractors, dating to the founder of chiropractics, D.D. Palmer. "The National Chiropractic Association, the predecessor organization to the American Chiropractic Association, opposed the polio vaccination program in the 1950's."<sup>46</sup> It has been reported that one third of surveyed chiropractors today agree that "there is no scientific proof that immunization prevents disease."<sup>47</sup> Similarly, many homeopaths discourage immunization; some reject the germ theory of disease outright, attributing disease to an "energy imbalance."<sup>48</sup>

A variety of religious groups have articulated objections to immunization, often on the grounds that aggressive medical intervention interferes with Providence. A pronounced elevation in incidence of disease is well documented among such groups. "When, for instance, a virulent outbreak of smallpox occurred in Montreal in 1885, it was soon controlled among the Protestant population through vaccination, but Catholics suffered

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43 William J. Barbaresi, M.D., et al., "The Incidence of Autism in Olmstead County, Minnesota, 1976-1997" *Archives of Pediatrics & Adolescent Medicine*, Vol. 159 No. 1, January 2005, pp. 37-44.

44 Frenkel, Op. Cit., p. 588.

45 See London, Op. Cit.

46 Cindy Province, RN, MSN, "Shot... or not? What to make of the anti-vaccination information." <http://www.cinam.net/son1-1-cp.html>.

47 Ibid., citing *Journal of Manipulative Physiologic Therapeutics*, 17:58490, 1994.

48 Ibid.



incredible losses of life as their clergy opposed compulsory vaccination on theological grounds.”<sup>49</sup>

Jehovah’s Witnesses have dropped their ban on vaccination, but Christian Scientists and the Amish<sup>50</sup> continue to reject vaccines as part of a general tendency to eschew medical treatment. Today, those “faiths which discourage the use of vaccines tend to lie outside the pale of Christian orthodoxy, either due to aberrant theology, extreme legalism, or both.”<sup>51</sup>

The scope of the danger to public health represented by religious objections to immunization is demonstrated by a recent, major epidemic of polio on the African and west Asian continent. Islamic preachers in Nigeria instructed parents not to have their children immunized. They claimed vaccines were being employed in an American conspiracy to infect Muslims with AIDS or to render them infertile.<sup>52</sup> The result was a resurgence of paralytic poliomyelitis in sixteen previously polio-free countries. The health crisis precipitated Saudi Arabia’s unprecedented requirement that pilgrims participating in the annual *hajj* provide proof of immunization.<sup>53</sup>

The Jewish community has also experienced outbreaks of infectious disease linked to widespread failure to immunize. While no specific religious objection to vaccination was articulated, “90 children under 9 years, four teenagers, and three adults from an Orthodox Jewish community in Salford have been notified with measles... total number of cases is believed to be significantly higher.”<sup>54</sup> The cases, reported in December 1999 and January 2000, were among unvaccinated children from the same community. During the same period, several cases of measles were also reported in East London’s Orthodox community.

Around the same time, in 1999 and 2000, the Netherlands suffered a measles epidemic of some 3,000 cases. “94% of the infected patients had not been vaccinated; most were members of a religious community who refused immunization for their children.”<sup>55</sup> It should be noted that this epidemic occurred despite a national MMR immunization rate of 96%. The conservative Protestant group most heavily affected by this epidemic suffered three fatalities.<sup>56</sup>

In the United States, 48 of the 50 states provide for religious exemptions from mandatory childhood immunization, if such procedures contradict parents’ religious beliefs. Only Mississippi and West Virginia have no such statutory provision.<sup>57</sup> The

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49 Rabbi Immanuel Jakobovits, Jewish Medical Ethics, (Bloch Publishing Co., New York, 1959), p. 13.

50 For data on a six state rubella outbreak, and the prevalence of pertussis among the Amish, see MMWR Weekly 1992; 41:468-469, 475-476.

51 Province, Op. Cit.

52 Leslie Shaffer, “Health Q & A: A Closer Look at Polio,” The Wall Street Journal Online, May 30, 2005.

53 “Muslims’ New Tack on Polio: A Vaccine en Route to Mecca,” The New York Times, August 20, 2005.

54 “Outbreak of Measles in an Orthodox Jewish Community,” Eurosurveillance Weekly, 4:3, 19 Jan. 2000.

55 Frenkel, Op. Cit.

56 See Stanley Plotkin, et al., “Anti-vaccination Hysteria,” Skeptical Inquirer May-June, 2004.

57 Hodge, Op. Cit.

specifics of state religious exemption laws vary. Arkansas, for example requires a “recognized church or denomination whose teachings forbid vaccination.”<sup>58</sup> Delaware demands only a “belief in relation to a Supreme being.”<sup>59</sup> Additionally, 18 states have a “philosophic exemption” for parents who express personal beliefs, not necessarily of a religious nature, that deem vaccination objectionable.

The risks incurred by religious exemptors are significant, as are the risks that accrue to others through exemptors’ susceptibility to disease. According to one study, “exemptors were 35 times more likely to contract measles than were vaccinated persons.”<sup>60</sup> Likewise, exemptors were “5.9 times more likely to acquire pertussis than vaccinated children... Schools with pertussis outbreaks had more exemptors than schools without outbreaks. At least 11% of vaccinated children in measles outbreaks acquired infection through contact with an exemptor.”<sup>61</sup>

Principled objection to any medical intervention as interference with Providence is generally to be considered foreign to Jewish Law and tradition.<sup>62</sup> Rabbi Isaac Klein emphasizes this point early in his basic introduction to medical ethics, A Time to be Born, A Time to Die, prepared for United Synagogue Youth. He cites the famous story of Rabbi Akiba and Rabbi Ishmael remonstrating with a “tiller of the soil,” a farmer, who questioned the religious propriety of medical treatment of the sick as trespassing in God’s domain:

“Could you not infer from your occupation that which is written, ‘as for man, his days are as grass’ (Psalms 103:15). Just as with a tree, if it is not fertilized, plowed, and weeded, it does not grow; even if it already grew but then is not watered, it dies. So the body is like the tree, the fertilizer is the medicine, and the farmer is the doctor.”<sup>63</sup>

The 11th century moral philosopher, Bachya ibn Pakuda, expressed a similar sentiment:

“Even though a man’s days are decided beforehand by God, one should engage in obtaining food and clothing... according to his needs. He should not say, ‘If God wishes

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58 Arkansas Code Annotated, Section 6-18-702. The U.S. Western District Court of Arkansas recently ruled this provision unconstitutional. Arkansas is thus effectively the third state with no statutory religious exemption in place.

59 Delaware Code Annotated, Title 14, Section 131.

60 D.A. Salmon, et al., “Health consequences of religious and philosophical exemptions from immunization laws: individual and societal risk of measles.” Journal of the American Medical Association (JAMA), 282:1, July 7, 1999, pp. 47-53.

61 That is, 11% of vaccinated children who nevertheless become infected. D.R. Feikin, et al., “Individual and community risks of measles and pertussis associated with personal exemptions to immunization.” Journal of the American Medical Association (JAMA), 284:24, December 27, 2000, pp. 3145-3150.

62 For a learned exploration of Jewish tradition’s historic attitude toward medicine, see “My Son, the Doctor: Jews and Medicine,” in Sherwin Nuland, Maimonides (Schocken, New York, 2005). Nuland acknowledge his literary debt to The Jewish Doctor: A Narrative History, by Michael A. Nevins, M.D., father of our colleague and accomplished C.J.L.S. member, Rabbi Daniel Nevins.

63 Rabbi Isaac Klein, A Time to be Born, A Time to Die (Dept. of Youth Activities, United Synagogue of America, 1976), pp. 13-14, citing Midrash Shmu’el 4:1.

me to live, he will sustain me without food, so I will not trouble myself to find food.' Similarly, one should not endanger himself relying solely on his trust in God."<sup>64</sup>

Some Jews have expressed concern about non-kosher or halachically objectionable ingredients in various vaccines, including monkey kidney cells and human fetal tissue as stabilizers. The kashrut of ingredients does not impinge on the permissibility of injected medication, as has been established in regard to the porcine origins of some insulin components used by diabetics.<sup>65</sup> The permissibility even of oral administration of medication with non-kosher ingredients, if a necessary, life-saving procedure, is well established: אין לך דבר שעומד בפני פקוח נפש -- "Preservation of life overrides all other considerations."<sup>66</sup>

Religious and philosophical exemptions from mandatory immunization are invoked only in cases where vaccination is not otherwise contraindicated. "All states permit medical exemptions for individuals who are immunocompromised, have allergic reactions to vaccine constituents, have moderate or severe illness, or other medical contraindications to vaccination."<sup>67</sup> Since the advent of the DTaP (diphtheria-tetanus-acellular pertussis) vaccine, medical exemptions due to serious reactions to vaccines have decreased precipitously. Low-grade fever following immunization is not a contraindication for additional vaccines. Valid medical exemptions are properly an increasingly rare occurrence (as for HIV infected children, those with congenital immune deficiencies, cancer patients undergoing chemo-therapy, etc.). Those with allergies to certain vaccines are not necessarily precluded from receiving other vaccines which do not contain the objectionable ingredient (egg protein, e.g.). "In general, there are few absolute contraindications to receiving any vaccine for the first time or subsequent doses in a series."<sup>68</sup> The role of medical exemption was anticipated by Nachmanides, who famously observed, "That which heals one patient may kill another."<sup>69</sup> Medical exemption requires merely a letter or other documentation from a physician. Naturally, the risk to others from children who remain unvaccinated is in no way diminished simply because they refrain from immunization for legitimate medical reasons.

It must be conceded that many parents seeking non-medical exemptions from mandatory immunizations for their children, do so based not on religious conviction or philosophical principle, but in response to rumor and fear, or so as to spare their children the minor pain associated with injections, and the temporary discomfort, soreness, and fevers which may result. This entirely understandable compassion is made all the more tempting by the protection afforded by high immunization rates and a presumed herd

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64 *Chovot ha-Levavot, Shaar Ha-Bitachon*, Ch. 4. *Chovot Ha-Levavot* was written as a spiritual counterpart to the halachic compendia of Bachya's contemporaries.

65 See Avraham Steinberg, editor, *Encyclopedia of Medicine and Jewish Law*, 3:271. See also Rabbi Chaim Ozer Grodzenski, Responsa *Achiezer* 3:61, in reference to the permissibility of non-kosher substances administered through a feeding tube.

66 BT *Yoma* 82A. Similarly, *סכנת נפשות דורחה את הכל*, *Shulchan Aruch, Yoreh De'ah* 263:1.

67 Daniel A. Salmon, "Mandatory Immunization Laws and the Role of Medical, Religious, and Philosophical Exemptions" *Unpublished Commentary*, October 2003.

68 Neal A. Halsey & Edwin J. Asturias, "Immunization" (Ch. 90), in Julia A. McMillan, et al., *Oski's Pediatrics: Principles and Practice*, 3rd Edition (Lippincott, Williams & Wilkins, 1999).

69 Ramban, *Torat Ha-Adam, Inyan Ha-Sakanah* (Chavel edition, 43).

immunity. “Vaccines are becoming a victim of their own success -- many individuals have never witnessed the debilitating diseases that vaccines protect against, allowing complacency toward immunization requirements to build.”<sup>70</sup>

### **III. Vaccination in Halachic Literature**

Enthusiastic halachic support for immunization protocols emerged even before the introduction of Edward Jenner’s effective vaccine against smallpox in 1796. Rabbi Abraham Nanzig<sup>71</sup> wrote a brief but impassioned treatise entitled *Aleh Terufah*, published in London in 1785. Nanzig, who had lost a son and a daughter to smallpox, endorsed the practice of variolation, a precursor to the more effective vaccine. (Nanzig refers to variolation as אינאקאלאציאהן -- “inoculation.”) Variolation involved the deliberate infection of patients with smallpox or cowpox, causing a mild form of the disease, but resulting in immunity to small pox upon recovery, essentially the same principle operative in more refined and reliable vaccines.<sup>72</sup> Nanzig offers this approbation:

והן עתה בחמלת ה' על ברואיו השיב ידו מבלע זה כמה ובלב כל חכם לב רופאי זמנינו נתן חכמה ותבונה בהמה שהמציאו לזה רפואה כוללת כמעט מחוסר סכנה.

“Now in God’s compassion for His creatures, He has withdrawn His hand from this destructive disease somewhat, granting skill<sup>73</sup> and understanding to the skilled physicians of our time, who have discovered an effective, almost risk-free treatment for this.”<sup>74</sup>

Nanzig succinctly states the subject of his research: אם הותר לאיש הישראלי להשתמש -- ברפואה זו, שיש בה לפי הנראה סכנה קצת כדי לסלק סכנה גדולה הבאה לשעתה אם לאו -- “Is it or is it not permissible for a Jew to use this treatment which, it appears, involves exposure to a minor risk in order to obviate a great risk yet to come?” In a remarkably early and concise expression of the discipline of Jewish medical ethics, Nanzig explains that his methodology will necessarily draw upon **ידעת החכם ובקיאת הרופא** -- “the knowledge of the Sage and the expertise of the physician.”<sup>75</sup> The type-face in the original is altered to emphasize that this phrase forms an acrostic for the Tetragrammaton -- a bold assertion of the sanctity of the author’s task, as well as the godliness of seeking medical care!

Focusing on the moral and halachic quandary of exposing a healthy child to infection through variolation, Nanzig reasons: והרי הוא כמו שהוא חולי בפנינו שכל ימיו הוא מתחולל -- “It is as if we were

70 S. P. Calandrillo, “Vanishing Vaccinations: Why are so many Americans opting out of vaccinating their children?” *University of Michigan Journal of Law Reform*, 37:2, Winter 2004.

71 Associated with London’s Hambro Synagogue and its Ashkenazi *Beit Midrash*. See Cecil Roth, *History of the Great Synagogue*, Chapter XIII: “Rabbi Solomon Hirschell and His Contemporaries.”

72 It was the early use of cowpox (*vaccinia*) in inducing immunity which accounts for the term “vaccine” - - from the Latin *vaccinus*: “pertaining to cows” (from *vacca*, cow). See *Dorland’s Illustrated Medical Dictionary*.

73 See Exodus 31:6.

74 Abraham Nanzig, *Aleh Terufah* (London, 1785), p. 1B.

75 *Ibid.*, 2A.

treating an illness currently present, since all his days he suffers with worry that he will contract the disease as an adult, when it is more dangerous, as is well known.”<sup>76</sup> Indeed, Nanzig concludes that המשתדל ברפואה הנ"ל בעודו באבו ה' לא יחשב לו עון אבל הוא מן -- הזריזות ומצוה דונשמרתם לנפשותיכם -- “One who undergoes this treatment while still healthy, God will not consider it a sin. Rather, it is an act of eager religious devotion, and reflects the Commandment to ‘be particularly careful of your wellbeing’ (Deut. 4:15).”<sup>77</sup>

The very real danger inherent in variolation was painfully clear to all of eighteenth century London. A son of King George III had died as a result of the procedure.<sup>78</sup> Nevertheless, Nanzig asserts: ועל מה שמתו אחד מאלף אין זה כדאי לכנותו בשביל זה לסכנה... -- “As for the death of one in a thousand, this is insufficient grounds to classify it as a danger... For such a negligible risk as this, we do not reject so great a benefit.”<sup>79</sup> The .001 likelihood of contracting smallpox from variolation was considered negligible in 1785, when the mortality rate for those otherwise unprotected from smallpox was so much greater. A “one in a thousand” risk is considered entirely unacceptable today. Heather Brannon, M.D., calculates<sup>80</sup> that even 50 years ago, smallpox vaccines carried a fatality risk of approximately one in a million: one thousand times safer than the procedure endorsed by Nanzig. The safety of childhood immunizations currently administered is greater still. For example, the OPV has been widely rejected in the United States due to the one in 2.4 million likelihood of contracting polio from the vaccine.<sup>81</sup>

Nanzig cites a still earlier medical protocol aimed at producing limited immunity against smallpox. This was described to him by Rabbi Shalom Buzagli,<sup>82</sup> an expatriate of Morocco serving on London’s Ashkenazi Bet Din. Buzagli reported that a child who had survived smallpox and was in the final stages of recovery would be given a handful of raisins to hold until they were warmed by his hand. The raisins would be given to a healthy child to eat, producing the same effect as variolation: mild infection resulting in immunity. The halachic import of this precedent is made explicit: אנשי שם מגדולי ישראל, ורבינו יצחק האלפאסי היתה ישיבתו בפעסי בברברי ולא מיחו בידם ש"מ שנתברר להם דרכי ההתר. --

“Men of renown among the great scholars of Israel, and the Yeshiva of Rabbeinu Yitzchak Alfasi (the Rif), are in Fez in Barbary,<sup>83</sup> and they did not prevent them from using this treatment. From this we may infer that they considered it permissible.”<sup>84</sup>

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76 Ibid., 6A.

77 Ibid., 6A-B.

78 “Smallpox: A Great and Terrible Scourge: Variolation,” published by the National Institutes of Health, [http://www.nlm.nih.gov/exhibition/smallpox/sp\\_variolation.html](http://www.nlm.nih.gov/exhibition/smallpox/sp_variolation.html).

79 Nanzig, Op Cit., 6B.

80 See Heather Brannon, M.D., <http://dermatology.about.com/cs/smallpox/a/smallpoxvacc.htm>.

81 “Vaccine Information Statement,” (U.S. Dept. of Health and Human Services/CDC); see <http://www.cdc.gov/nip/publications/VIS/vis-IPV.pdf>. IPV is considered sufficient protection, given the rarity of polio today. In the context of a polio outbreak, however, the risk would have to be recalculated, and the propriety of OPV reconsidered.

82 Kabbalist born in Marakesh, 1700. Died in London, 1780. The Buzagli/Buzaglo family is remembered in connection with a number of medical innovations. See *Encyclopedia Judaica*, 4:1544-1545.

83 That is, Morocco.

84 Nanzig, Op Cit., 10A.

Following Nanzig's example, Jenner's discovery of vaccination was "hailed with enthusiasm by Israel Lipschuetz and other leading rabbis."<sup>85</sup> Lipschuetz, author of Responsa *Tipheret Yisrael*, also listed "Edward Jenner as a 'Righteous Gentile' for the development of the smallpox vaccine that saved hundreds of thousands of lives."<sup>86</sup>

The permissibility of Jenner's vaccine having been well established, the procedure was treated as compulsory by Rabbi Nachman of Bratzlav (1772-1811), to whom the following ruling is attributed:

צריכים להזהר מאד מאד בבריאות של ילדים, ובפרט בעודם קטנים, ואל יקל בזה כלל... ואמר רבינו ז"ל, שצריכים להעמיד לכל תינוק פאקין קדם רבע שנה, כי אם לא, הוא כמו שופך דמים, ואפילו אם גרים רחוק מן העיר, צריך לנסוע לשם אפילו בזמן שהקור גדול וכו'.

"We must be exceedingly careful about the health of children, especially while they are still small. One should in no way be lax in this matter... Our Rabbi, of blessed memory, said that one must vaccinate every baby against smallpox before the age of three months, for if he does not do so, he is like one who sheds blood. And even if one lives far from the city, one must travel there even if the season is very cold, etc."<sup>87</sup>

Bratzlav Chassidim have expanded the instruction of their Rebbe to include more recent innovations in immunization:

וכן בעתים הללו מה שנותנים לתינוק אילו רפואות נגד כל מיני מחלות רעות כמו שתוק, רחמנא לצלן, וכדומה, צריכים לעשות זאת, ואל יהיה חכם בעיניו, כי זוהי סכנת נפשות.

"And so, too, in our time, when children are given immunizations against all kinds of serious illnesses, like paralytic poliomyelitis (God save us!) or the like, we must act accordingly. Let no one think himself clever by evading this, for it is a matter of mortal peril."

It is instructive that so unambiguous an endorsement of immunization as a religious duty is linked to Rabbi Nachman, who was famously skeptical of physicians ("It was difficult for the Angel of Death to kill everybody in the whole world, so he appointed doctors to assist him"<sup>88</sup>). He distrusted "modern" medicine as the contemporary equivalent of magic and sorcery!<sup>89</sup>

The Responsa Committee of the Central Conference of American Rabbis, in a 1999 ruling, affirmed the propriety of a Reform congregation's religious school denying admission to students whose parents refused to have them immunized:

85 Rabbi Immanuel Jakobovitz, *Jewish Medical Ethics*, (Bloch Publishing Co., New York, 1959), p. 14. See also *Tipheret Yisrael*, Avot III:1.

86 "The Ethics of Smallpox Immunization," Daniel Eisenberg, M.D. See <http://www.aish.com/societyWork/sciencenature>

87 *Kuntres Hanhagot Yesharot* (Chassidei Bratzlav, Jerusalem, 1997), pp. 5-6.

88 See *Sichot Ha-Ran*, #50.

89 See Byron L. Sherwin, "Prayer, Not Prozac" in *Stauros Notebook*, vol. 20, #1, Spring 2001.

“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

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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 -- המאבדין 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 לזהר 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>

96 DiPoce & Buchbinder, Op Cit., p. 96.

97 Maimonides, *Mishneh Torah*, *Hilchot De’ot* 4:1.

98 Dorff, Op Cit., pp. 245-246.

99 *Shulchan Aruch*, *Yoreh De’ah* 116:5.

100 Rema ad loc., citing BT *Chullin* 10A.

101 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 חכוד לח הרי הוא כשחין פורח ואם פשט ברוב הצבור מתענין ומתריעין עליו אבל חכוד 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 (מִוֹתֵנָה בַּחֲזִירִי) 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 אִסְכְּרָה -- 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 אִסְכְּרָה as the harshest among 930 known types of death. There, Rashi translates אִסְכְּרָה into Old French: “*estrangulment*,” which supports identification as diphtheria, which involves a frequently life-threatening constriction of the throat and air passages. (Rema thus links אִסְכְּרָה 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 אִסְכְּרָה as diphtheria. See also BT *Taanit* 27B, which identifies אִסְכְּרָה 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 אִסְכְּרָה 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 חֲרָחֹר -- 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 -- מתענים ומתריעים על אלו החולאים מיד -- “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 חייבין בנפשותם 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 חבירו 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 אוזן חבירו והודיעו; או שידע בעכו"ם או באנס שהוא בא על חבירו ויכול לפייסו בגלל חבירו 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 -- תעמוד על דם רעך -- “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

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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:

שמהקרא 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.

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125 Ibid., 1:6.

126 BT *Sanhedrin* 73A.

127 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.

128 Leviticus 19:16.

129 Deuteronomy 22:2.

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

131 Rabbi Eliezer Waldenberg, *Responsa Tzitz Eliezer* 15:40, 1981.

132 Exodus 21:29.

133 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 תבנה בית חדש ועשית מעקה לגגך ולא תשים דמים בביתך כי-יפל הנפל ממנו: -- “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 להסירו 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) -- Rambam provides double emphasis: וילהזהר בדבר יפה יפה.

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: ובשומרו על לב בכל יום מצוה זו ויראה אם צריך תקון, 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

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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 הת”ת שההורים וגם לרבות המלמדים והמנהלים דהיות היכולת בידם להכריח את ילדיהם לקבל הטפול הדרוש בעיניהם שמחוייבים 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 להתייעץ 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:

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151 Rabbi David Hoffman, Responsa *Melamed Le-ho’il* 2:104, Frankfort 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, אין כוונתו דזהו רק איסור דרבנן -- “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: והמסכן את עצמו כאלו מואס -- “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 מי שיש ברשותו דבר המזיק כגון כלב רע או -- “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 הלכות תלמוד תורה -- “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 סם 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.

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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 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."

## **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**

**בפינו ובפיפיות עמך בית ישראל  
ונהיה כולנו אנחנו וצאצאינו וצאצאי עמך בית ישראל  
כולנו יודעי שמך ולומדי תורתך  
לעולם לא אשכח פקודיך כי בם חייתני**

*“May the words of Torah, Lord our God, be sweet  
in our mouths and in the mouths of all Your People,  
so that we, our children, and all the children of the House of Israel  
may come to love You and to study Your Torah.  
‘I will never neglect Your Precepts, for through them You have preserved my life.’”*

**חיוב החיסון בבתי ספר יהודיים**

חשן משפט תכ"ז: ח'

הרב חיים יוסף פראוור

**שאלה:** הרב ראובן אברמסון, מנהל המחלקה לחנוך של בתי הכנסת המאוחדים, שואל אם מותר למנהלי בתי ספר יומיים ע"ש ש"ז שכטר להעניק פטור מהחיסונים הדרושים לפי דינא דמלכותא, לתלמידים שהוריהם מבקשים בכך.

**תמצית התשובה:** לפי חוקי כל מדינות ארצות הברית, אסור להכניס ילד לבית הספר אם לא קבל חיסונים למניעת מחלות מדבקות מסוימות, כגון: חצבת, שעלת, אדמדמת, חזרת, אסקרה (דפתריה), שתוק ילדים, וכו'. יש חיוב הלכתי מרכזי לשמר על הבריאות שלנו, ושל ילדינו: "השמר לך ושמר נפשך מאד" (דב' ד' ט')... "ונשמרתם מאד לנפשותיכם" (דב' ד' ט"ו). כידוע, יש גם חיוב הלכתי ומוסרי לשמר על חיי הזולת אם יסתכן: "לא תעמד על דם רעך" (ויקרא י"ט ט"ז). נכלל במצות השבת אבידה לבעליו חיוב להשיב גם את חייו, גם את בריאותו של אדם, לפי כל מידת יכולתינו: "והשבותו לו... לא תוכל להתעלם" (דב' כ"ב ב'-ג'). נוסף על כל זה, אנו מצוים להכיר ולהסיר כל מכשול מרשותינו, בו עלולים בני אדם להסתכן: "ועשית מעקה לגגך ולא תביא דמים על ביתך" (דברים כ"ב ח').

מחלות מדבקות, שמהן סובלים במיוחד ילדים, הן סכנת נפשות חמורה. כל תלמיד בית ספר שלא קבל חיסונים למניעת מחלות אלו, הרי הוא בעצמו מסתכן, ומסכן ילדים ומבוגרים אחרים -- אפילו אם הם קבלו כבר את החיסונים. התלמיד שלא קבל חיסונים הרי הוא מקור פוטנציאלי להדבקות. זאת אומרת, תלמיד כזה הוא כעין מכשול, מקור לסכנה חמורה שחייבים להסיר אותו מבית הספר. החיסונים הם כמו המעקה שחייבים לבנות על הגג. כתבו הרמב"ם ואחריו מחבר שלחן ערוך, רבי יוסף קארו: "אחד הגג ואחד כל דבר שיש בו סכנה... וכן כל מכשול שיש בו סכנת נפשות מצוות עשה להסירו... שנאמר: השמר לך ושמר נפשך. ואם לא הסיר והניח המכשולות המביאים לידי סכנה ביטל מצוות עשה ועובר בלא תשים דמים" (משנה תורה הל' רוצח ושמירת נפש י"א ד'; ש"ע חשן משפט תכ"ז: ז'-ח').

”אין לך דבר שעומד בפני פקוח נפש“ (יומא פ”ב:). למרות ההדגשה הברורה במסורתנו על עניני רפואה ופקוח נפש, יש מסורות וקבוצות דתיות אחרות (למשל, ”המדע הנוצרי“) שמסרבים להתעסק ברפואה בכלל ובחיסונים למניעת מחלות מדבקות במיוחד. בין קבוצות אלו יש אפידמיות ומקרי מות תכופים מחמת המחלות בדרגה הרבה יותר גבוהה מיתר האוכלוסיה. אסור לנו, ולמחנכים ולמנהלים ולתלמידי החכמים בבתי הספר היומיים שלנו, להכנס ללא צורך לסכנת נפשות כה חמורה, וחלילה שנעשה דבר כזה בשם תורת ישראל. כמו שכתב הרב דוד צבי הופמאן זצ”ל:

”דעת אביו ואמו לא מעלה ולא מוריד... ולא מצינו בכל התורה כולה שיש לאב ואם רשות לסכן נפש ילדיהם ולמנוע הרופא מלרפאותם“ (ש”ת מלמד להועיל ב’ ק”ד).

הורים חייבים לערך חיסונים לילדיהם. לפי הפוסקים תלויות בענין זה לא פחות מחמש מצוות עשה ושלוש מצוות לא תעשה. נכון וראוי לכל בית ספר יומי ע”ש ש”ז שכטר לדחות ילדים שלא קבלו חיסונים הדרושים על פי חוק המדינה.