

HALACHIC AND HASHKAFIC ISSUES IN CONTEMPORARY SOCIETY

129 - VACCINATION - PART 1 **OU ISRAEL CENTER - SPRING 2019**

- It is now well known that a measles outbreak has recently affected a number of orthodox Jewish communities in the US and Israel.
- After many decades of measles vaccinations, the incidence of the disease has been rapidly declining to the point that, in the US, almost all infections were the result of people bringing the disease in from overseas visits (especially to Israel!)
- These latest outbreaks are, according to medical opinion¹, the result of failure in certain communities to vaccinate their children and growing numbers of adults who may have been vaccinated but no longer have immunity². This reduces the 'herd immunity' of the community and enables the disease to spread.
- The orthodox Jewish community has been particularly prone due the fact that the same people spend time a lot of time with each other and at large gatherings³ - schools, shuls, semachot, public events.
- The reason for the fall in vaccination in the orthodox community is a combination of:
 - (i) a growing concern in the general public that vaccinations could have serious side effects⁴. This is fueled by the recourse that people have to the internet for crowd-sourced information⁵, rather than from official medical sources. It is also fueled by real historic tragedies, such as the thalidomide scandal where the side effects of a drug given for morning sickness during pregnancy caused horrendous deformities in tens of thousands of babies.
 - (ii) the tendency of social media to sensationalize and publicize individual, anecdotal or rare cases (especially those of celebrities) and feed the impression that they are more common.
 - (iii) the inability of many people to weigh probability and risk and make rational choices⁶ based on statistics.
 - (iv) the familiarity and concern of people with 'modern' syndromes and diseases such as serious allergies, autism and SIDS vs modern unfamiliarity with epidemics of diseases such as measles, mumps, german measles (rubella⁷), polio and smallpox.
 - (v) a growing suspicion in the general public of conspiracy theories, which is in turn fueled by a distrust of authority and government⁸ and a willingness to accept counter-cultural narratives.
 - (vi) a growing cynicism that the medical establishment is too close the pharmaceutical industry and its medical integrity is compromised by the major financial stakes involved⁹.
 - (vii) a growing willingness to accept and adopt non-traditional medical options.
 - (viii) a negativity, and even hostility, in some Jewish orthodox circles to science, which can be perceived as being contrary to Torah and with an anti-religious agenda.
 - (ix) the adoption of a perceived anti-vaccination position by a small number of rabbinic leaders.
 - (x) the growth of a doctrine of Da'as Torah within those communities which cause members to follow rabbinic guidance over medical advice, even in health matters.
- Relevant halachic questions include:
 - (i) Is a person permitted or obligated to vaccinate their child if there are potential side-effects? How significant do these side effects need to be in order to be halachically relevant?
 - (ii) Is a person permitted NOT to vaccinate their child, if this could be dangerous for the community at large, even if not particular dangerous for the child in question? In other words, does an person have an obligation to risk a small danger in order to save or protect others?
 - (iii) What types of risks in life does a person have (a) an obligation to avoid; (b) an option to take; (c) an obligation to take?
 - (iv) How is medical opinion to be weighed in halacha?
 - (v) Can a person be compelled to vaccinate their children?

1. This is almost unanimous in the medical establishment.

2. There are also exposed individuals such as: (i) people who have been vaccinated but did not acquire immunity, which happens in a small percentage of cases; (ii) babies who are too young to be vaccinated; and (iii) people who are unable to received the vaccine for medical reasons.

3. This was also seen outside the Jewish community in the Disneyland measles outbreak in 2014.

4. The purpose of this shiur is NOT to assess the medical evidence involved. That must be left to those medically qualified. But there is a legitimate halachic discussion to be had as to how we should process the medical information that we receive and make appropriate halachic choices.

5. In Part 2 we will iyH examine the evidence brought for the dangers of vaccinations and assess its halachic validity.

6. Most of us have cognitive biases on many issues and are understandably moved by the cases of others who suffered tragedies with their own children and link them with vaccines. See an interesting analysis of the psychological biases involved at <https://www.youtube.com/watch?v=Rzxr9FeZf1g>

7. During the course of a major outbreak of rubella in pre-vaccination United States in 1964-65, an estimated 12.5 million cases occurred throughout the country. Eleven thousand fetuses were miscarried, died in utero or were aborted. Twenty thousand infected infants survived to term. Of those, 2,100 died in the perinatal period, twelve thousand were deaf, 3,580 were blind and 1,800 suffered permanent mental disabilities.

8. This can also be seen in some of the political developments of the 21C (such as the election of Donald Trump) and the reactions and counter-reactions to contemporary issues (such as climate change) and the championing of person choice over government coercion.

9. Even though there may be legitimate concerns on some such issues, in fact, vaccinations are not a large source of income for the pharmaceutical industry. However, the anti-vaxers claims that many doctors cannot expose the dangers of vaccination for fear of losing their medical licence due to the extreme pressure of the medical establishment and industry.

(vi) Can/should a child be excluded from a Jewish school if they are unvaccinated?

(vii) How does the secular law impact on this? In States where parents are able to file an objection to vaccinations on religious grounds, is it legitimate for a halachically observant Jew to file an objection on the basis that halacha prohibits vaccination?

A] VACCINATION AND INFECTIOUS DISEASES - SOME BACKGROUND

Smallpox

1. During the 18th century the disease killed an estimated 400,000 Europeans each year, including five reigning monarchs, and was responsible for a third of all blindness. Between 20 and 60% of all those infected—and over 80% of infected children—died from the disease. During the 20th century, it is estimated that smallpox was responsible for 300–500 million deaths. In the early 1950s an estimated 50 million cases of smallpox occurred in the world each year. As recently as 1967, the World Health Organization estimated that 15 million people contracted the disease and that two million died in that year. After successful vaccination campaigns throughout the 19th and 20th centuries, the WHO certified the global eradication of smallpox in December 1979. Smallpox is one of two infectious diseases to have been eradicated, the other being rinderpest.

https://en.wikipedia.org/wiki/History_of_smallpox

Measles

2. Measles is an airborne disease which spreads easily through the coughs and sneezes of infected people. It may also be spread through contact with saliva or nasal secretions. Nine out of ten people who are not immune and share living space with an infected person will be infected. People are infectious to others from four days before to four days after the start of the rash. Most people do not get the disease more than once. The measles vaccine is effective at preventing the disease, and is often delivered in combination with other vaccines. Vaccination resulted in a 75% decrease in deaths from measles between 2000 and 2013, with about 85% of children worldwide being vaccinated as of 2014. Once a person has become infected, no specific treatment is available Measles affects about 20 million people a year, primarily in the developing areas of Africa and Asia. While often regarded as a childhood illness, it can affect people of any age. It is one of the leading vaccine-preventable disease causes of death. In 1980, 2.6 million people died of it, and in 1990, 545,000 died; by 2014, global vaccination programs had reduced the number of deaths from measles to 73,000. Despite these trends, rates of disease and deaths increased from 2017 to 2019 due to a decrease in immunization. The risk of death among those infected is about 0.2%, but may be up to 10% in people with malnutrition. Most of those who die from the infection are less than five years old.

<https://en.wikipedia.org/wiki/Measles>

3. Subacute sclerosing panencephalitis (SSPE) is a neurological disorder that is 100 percent fatal. Infants younger than 12 months, who are too young to receive measles, mumps and rubella (MMR) vaccine, can get infected with measles and later develop SSPE, which may lay dormant for years. While it was once thought the risk of post-measles SSPE was one in 100,000, recent research identified a rate as low as 1 in 1,700 in Germany among children infected with measles before they were 5 years old, and the new study found it is about one in 600 for those who get measles as infants before being vaccinated. There is no cure for SSPE and the only way to prevent it is to vaccinate everyone against measles.

Infectious Diseases Society of America, Always-deadly measles complication more common than believed 10/28/16

Herd Immunity

4. Individuals who are immune to a disease act as a barrier in the spread of disease, slowing or preventing the transmission of disease to others. An individual's immunity can be acquired via a natural infection or through artificial means, such as vaccination. When a critical proportion of the population becomes immune, called the herd immunity threshold (HIT) or herd immunity level (HIL), the disease may no longer persist in the population, ceasing to be endemic.

https://en.wikipedia.org/wiki/Herd_immunity

5.	<u>Disease</u>	<u>Transmission</u>	<u>HIT</u>	<u>Disease</u>	<u>Transmission</u>	<u>HIT</u>
	Measles	Airborne	92–95%	Polio	Fecal-oral route	80–86%
	Diphtheria	Saliva	83–86%	Mumps	Airborne droplet	75–86%
	Rubella	Airborne droplet	83–86%	SARS	Airborne droplet	50–80%
	Smallpox	Airborne droplet	80–86%	Ebola	Bodily fluids	33–60%
	Influenza	Airborne droplet	33–44%			

ibid

B] VACCINATION - SOME HISTORY

6. People struggled to find ways to battle with smallpox. Variolation was a process developed in the 10th century in China and India. It involves taking pus from the pocks of someone suffering from smallpox and inoculating healthy people with it. Usually a mild case of smallpox developed, giving lifelong immunity afterwards. There was a risk of death from this, but in a world where smallpox was rife the odds made it worthwhile; about 0.5-2 percent of people died after variolation, compared with 20-30 per cent after natural smallpox. A major disadvantage of the practice was that variolated people could pass on severe smallpox to others.



The real breakthrough in fighting the virus came in 1796, when Edward Jenner carried out his famous experiment. He inserted pus extracted from a cowpox pustule on the hand of a milkmaid, into an incision on the arm of an eight-year-old boy, James Phipps. Jenner was testing his theory, drawn from the folklore of the countryside, that milkmaids who suffered the mild disease of cowpox never contracted smallpox. Jenner proved conclusively that contracting cowpox provided immunity against smallpox as well. He was quick to realise the enormous potential of vaccination. In 1801 he wrote 'It now becomes too manifest to admit of controversy, that the annihilation of the Small Pox, the most dreadful scourge of the human species, must be the final result of this practice.'

http://www.bbc.co.uk/history/british/empire_seapower/smallpox_01.shtml

- The earliest published Torah material concerning vaccination was in 1785. Alexander ben Solomon Nanisch of Hamburg, who had lost two of his own children to smallpox, published a work entitled *Aleh Terufah* in London containing a teshuva concerning the halachic permissibility of inoculation against smallpox.
- Nevertheless there was a significant amount of public opposition to Jenner's new inoculation and it is clear that, at that time, this was not a risk that most people were prepared to take.

7. מי שנפלה עליו מפולת - ספק הוא שם ספק אינו שם, ספק חי ספק מת, ספק עובד כוכבים ספק ישראל - מפקחין עליו את הגל.

משנה מסכת יומא פרק ח משנה ז

The Mishna rules that we must break Shabbat to save a Jewish¹⁰ life, even if there are multiple levels of doubt as to whether the life can indeed be saved.

8. (ג) וזנה נ"ל היתר לעשות אינאקולאטיאן של פאקקען, אף שא' מאלף מת ע"י האינאקולאטיאן עכ"פ שאם יתהו צו הפאקקען הטבעיים הסכנה קרובה יותר, ולכן רשאי להכניס א"ע צסכנה רחוקה כדי להגיל א"ע מסכנה קרובה. ורואה ברורה לדברי ממ"ש רצ"י צטור ח"מ סוף סי' תכ"ו צסס הירושלמי דחייב אדם להכניס א"ע צספק סכנה כדי להגיל חצירו מודאי סכנה. והרי ברואה חצירו עוצב צנהר אינו מוחלט ודאי שיטבע אם לא יגיל הוא, וכי לא אפשר שיגלל ממקום אחר. ואם להגיל חצירו יש חיוצ להכניס א"ע צספק סכנה, מכ"ש שיהיה רשות צידו להגיל את גוף עצמו ע"י הכנסו א"ע לספק סכנה.

תפארת ישראל - בועז שם

The Tiferet Yisrael explains that one is obligated to risk a lower-level danger to prevent a higher-level danger. This include taking the inoculation against smallpox, even though the inoculation itself had a 1 in 1000 mortality rate! The risk of catching the disease, even though that might never happen, is worth the voluntary risk of having the vaccinations!

9. ואנחנו רואים כמה מחסידיהן שמלצד שמכירין יולר צראשית, ומאמינין צתה"ק שהיא אלהית, ועושין ג"ח גם לישראל. וכמה מהן שהיטיבו ציותר לכל צאי עולם. כהחסיד יענער שהמליא האפאקקענאיימפפונג, שעל ידה ניגולים כמה רצבות צני אדם מחולי וממיתה וממויין. ודרחא שהציא הקארטאפפעל לאייראפא, שמעכצ כמה פעמים הרעצ. וגועטנצערג שהמליא את הדפוס. וכמה מהן שלא נשתלמו כלל צעה"ז, כהחסיד רייכלין שהערה למות נפשו להגיל שריפת השס"י"ן שנלעווה מהקיסר מאקסימיליאן צשנת רס"צ ע"י הסתת המומר פפעפערקארן ש"ט עם הכומרים קשר של רשעים שלו. וכי ס"ד שכל המעשים הגדולים האלו לא ישולמו לעב"צ לאחר הפרגוד? ח"ו! והרי הקדוש צרוך הוא אין מקפח שכר כל צריה.

תפארת ישראל - בועז מסכת אבות פרק ג'ידד

The Tiferet Yisrael describes certain non-Jews who he considers have a great portion in the World to Come. They include Edward Jenner - who invented the smallpox vaccination, Drake - who discovered potatoes(!), and Guttenberg - who invented the printing press.

The main diseases where vaccination is most effective are: diphtheria, tetanus, pertussis (whooping cough), poliomyelitis (polio), measles, mumps, rubella, hepatitis B, influenza, pneumococcal infections.

10. The halacha also mandates breaking Shabbat to save a non-Jewish life, but the mechanics of that halachic analysis are different. To download more source sheets and audio shiurim visit www.rabbimanning.com

C] PROTECTING ONESELF AND PROPER HEALTH CARE

10. אמר ליה רב הונא לרבה בריה: מאי טעמא לא שכיחת קמיה דרב חסדא דמחדן שמעתיה? אמר ליה: מאי איזיל לגביה? דכי אזילנא לגביה מותיב לי במילי דעלמא. אמר לי: מאן דעייל לבית הכסא לא ליתיב בהדיא, ולא ליטרח טפי. אמר ליה: הוא עסיק בחיי דברייתא ואת אמרת במילי דעלמא? כל שכן, זיל לגביה.

שבת פב.

The Rabbis took health care very serious. Even apparently mundane matters such as healthy use of the bathroom are considered important Torah topics!

11. רבי נתן אומר: מניין שלא יגדל אדם כלב רע בתוך ביתו, ואל יעמיד סולם רעוע בתוך ביתו? ת"ל: (דברים כב:ח) וְלֹא תִשֵּׂים דָּמַיִם בְּבֵיתְךָ

בבא קמא טו:

There is a negative mitzva not to do anything or own anything which is dangerous to health.

12. (ט) רַק הַשְּׁמֶר לְךָ וּשְׁמֹר נַפְשְׁךָ מֵאֵד פֶּן תִּשְׁכַּח אֶת הַדְּבָרִים אֲשֶׁר רָאוּ עֵינֶיךָ וּפֶן יִסְוֶרוּ מִלְּבָבְךָ כֹּל יָמֵי חַיֶּיךָ וְהוֹדַעְתָּם לְבָנֶיךָ וְלִבְנֵי בָנֶיךָ: (י) יוֹם אֲשֶׁר עִמְדָתָ לִפְנֵי ה' אֱלֹהֶיךָ בְּחָרֵב בְּאֶמֶר ה' אֱלֹהֵי הַקֶּהֱל לִי אֶת הָעָם וְאֲשַׁמְעֵם אֶת דְּבָרֵי אֲשֶׁר לְמַדּוֹן לִירְאָה אֹתִי כָּל הַיָּמִים אֲשֶׁר הֵם חַיִּים עַל הָאָדָמָה וְאֶת בְּנֵיהֶם לְמַדּוֹן: (טו) וְנִשְׁמַרְתֶּם מֵאֵד לְנַפְשֵׁיכֶם כִּי לֹא רְאִיתֶם כָּל תְּמוּנָה בְּיוֹם דְּבַר ה' אֱלֹהֵיכֶם בְּחָרֵב מִתּוֹךְ הָאֵשׁ:

דברים ד

The Torah stresses the need to look after ourselves carefully when it comes to our collective memory of Sinai and the imperative of passing this on to our children.

13. תנו רבנן: מעשה בחסיד אחד שהיה מתפלל בדרך. בא הגמון אחד ונתן לו שלום ולא החזיר לו שלום. המתין לו עד שסיים תפלתו. לאחר שסיים תפלתו אמר לו: ריקא, והלא כתוב בתורתכם רק השמר לך ושמור נפשך וכתוב ונשמרתם מאד לנפשתיכם. כשנתתי לך שלום למה לא החזרת לי שלום? אם הייתי חותך ראשך בסייף מי היה תובע את דמך מיד?

ברכות לב:

Chazal read this as also being a mitzva to protect our lives. But is negative or positive and proactive?

There are three levels of obligation¹¹ in removing health and safety threats from our lives:

- Imminent and present dangers to life and limb - Torah obligation.
- Activities which present a low but significant risk of danger - Rabbinic obligation.
- Activities which present a low-level longer-term risk to health - positive behavior to act in this way, although we apply the principle Shomer Peta'im Hashem (see below).

C1] IMMINEANT AND PRESENT DANGERS

14. אחד הגג¹² ואחד כל דבר שיש בו סכנה וראוי שיכשל בו אדם וימות כגון שהיתה לו באר או בור בחצירו, בין שיש בהן מים בין שאין בהן מים, חייב לעשות להן חוליה גבוהה עשרה טפחים או לעשות לה כסוי כדי שלא יפול בה אדם וימות. וכן כל מכשול שיש בו סכנת נפשות, מצות עשה להסירו ולהשמר ממנו ולהזהר בדבר יפה יפה שנ' השמר לך ושמור נפשך. ואם לא הסיר, והניח המכשולות המביאין לידי סכנה, ביטל מצות עשה ועבר על לא תשים דמים.

רמב"ם הלכות רוצח ושמירת הנפש פרק יא הלכה ד

The Rambam rules that there are two Torah mitzvot to do what is necessary to protect our physical health from damage. This is also ruled at the end of Shulchan Aruch.¹³ As such there is not only a negative prohibition on dangerous behavior but also a positive mitzva to be proactive and take all necessary steps to avoid dangers to health.

- Examples would include:
- a playground on a roof, or near a pool, without a fence.
 - exposed live electrical wires.

11. For an excellent concise presentation of these see

<https://www.yutorah.org/lectures/lecture.cfm/830962/rabbi-aryeh-lebowitz/ten-minute-halacha-can-a-school-compel-parents-to-vaccinate-their-children/>

12. With regards to an unfenced roof, the halacha requires it to be fixed immediately even if the height of the drop is only 10 tefachim. Thus, even though the probability of death is not very high, it is a real possibility. In any event, the probability of significant injury is high, even at 10 tefachim.

13. Choshen Mishpat 427:6,8

C2] LOW BUT SIGNIFICANT RISK

15. ה' הרבה דברים אסרו חכמים מפני שיש בהם סכנת נפשות וכל העובר עליהן ואמר הריני מסכן בעצמי ומה לאחרים על כן או איני מקפיד על כך מכין אותו מכת מרדות.
ו' ואלו הן: לא יניח אדם פיו על הסילון המקלח מים וישתה, ולא ישתה בלילה מן הנהרות ומן האגמים שמא יבלע עלוקה והוא אינו רואה, ולא ישתה מים מגולים שמא שתה מהן נחש וכיוצא בו מזוחלי עפר וישתה וימות.

רמב"ם הלכות רוצח ושמירת הנפש פרק יא הלכה ה'

The Rabbis prohibited¹⁴ a number of actions which presented a low level risk, such as drinking from liquids that were left uncovered and could have been contaminated by a snake depositing venom. Even though the likelihood of such danger, even when snakes were present¹⁵, was low for an individual, when taken over the Jewish population as a whole this adds up to significant casualties and the Rabbis prohibited them.

16. צריך לזהר מליתן מעות¹⁶ בפיו שמא יש עליהן רוק יבש של מוכי שחין. וכן יזהר מכל דברים המציאים לידי סכנה כי סכנתה חמירה מאיסורא ויש לחוש יותר לספק סכנה מלספק איסור. ולכן אסור ליתן ככל מקום סכנה כמו תחת קיר נטוי או יחידי בלילה וכן אסרו לשתות מים מן הנהרות בלילה עוד כתבו שיש לברוח מן העיר כשדבר צעיר, ויש ללאת מן העיר בתחלת הדבר, ולא צופו. וכל אלו הדברים הם משום סכנה, ושומר נפשו ירחק מהם ואסור לסמוך אדם או לסכן נפשו בכל כיוצא בזה

שולחן ערוך יורה דעה הלכות מאכלי עובדי כוכבים סימן קטו

The Rema rules that we must apply this category to all relevant situations of significant risk of danger¹⁷, including fleeing from a plague before it becomes an epidemic! Some poskim have applied this in principle to inoculating against the plague before it happens.¹⁸ The Rema further rules that in questions of sakana we are more machmir than in question of halachic issur.¹⁹

Examples would include: • smoking • not vaccinating

C3] LONG-TERM LOW-LEVEL RISKS TO HEALTH

17. הואיל והיות הגוף בריא ושלם מדרכי השם הוא. שהרי אי אפשר שיבין או ידע דבר מידיעת הבורא והוא חולה. לפיכך צריך להרחיק אדם עצמו מדברים המאבדין את הגוף, ולהנהיג עצמו בדברים המברין והמחלימים, ואלו הן: לעולם לא יאכל אדם אלא כשהוא רעב, ולא ישתה אלא כשהוא צמא, ואל ישהא נקביו אפילו רגע אחד

רמב"ם הלכות דעות פרק ד הלכה א'

The Rambam stresses that maintaining a healthy body is an essential prerequisite to being able to serve God since physical sickness holds a person back from connecting intellectually with the Divine.

18. **אם יש איסור בעישון סיגריות.**

הנה ליתן כלל להא דאמרו שומר פתאים ה' בשבת (קכט:) ובנדה (מה.) בשני דברים שאיכא בהם חשש סכנתא ולא זהירי בהו, אף שודאי בסתם חשש סכנתא אסור לסמוך ע"ז אף אם יזמן כה"ג בדבר שיש בו חשש סכנתא ולא זהירי בהו אינשי, נראה פשוט דבדבר דאיכא הרבה שלא קשה להו לבריאותם כלום כגון הרבה מיני אוכלין שהאינשי נהנין מהם ביותר כבשרא שמנא ודברים חריפים ביותר אבל קשה זה לבריאותן של כמה אינשי, ליכא בזה איסור מלאוכלן מצד חשש סכנה, מאחר דהרוב אינשי לא מסתכנין מזה. ועיין ברמב"ם פ"ד מדעות שנקט שם עניני אוכלין ומשקין הטובים לבריאות הגוף והרעים לבריאות הגוף ולא כתב בלשון איסור לא מדאורייתא ולא מדרבנן שאסרו חכמים והוא משום דעל כל הדברים האלו שפרט אותם לא שייך לאוסרן ממש מאחר דהרוב מהן עניני הנאה הן ולרובא דרובא דאינשי לא מזיק להו כלום ואיכא הרבה מהן שא"א להזהר בהו להרבה אינשי ולדברים כאלו דמי עישון סיגריות ובחשש כזה אמרינן שומר פתאים ה'.

שו"ת אגרות משה חושן משפט חלק ב סימן עו

In a 1981 teshuva dealing with the permissibility of smoking²⁰, Rav Moshe Feinstein quotes this third category of the Rambam and applies to it the principle of Shomer Peta'im Hashem - God protects the simple!

Examples would include: • eating fatty, sugary or salty foods

14. There is a debate as to whether this issur is purely rabbinic or min haTorah but without malkut - see Michat Asher Devarim Siman 7.

15. The Shulchan Aruch (YD 117:1) rules that, now that snakes are no longer present in significant numbers in urban areas, this prohibition is no longer applicable.

16. Modern money is in fact filthy. Time Magazine reports: "Studies show that a solid majority of U.S. bills are contaminated by cocaine.... Also found on bills: fecal matter. A 2002 report in the Southern Medical Journal showed found pathogens - including staphylococcus - on 94% of dollar bills tested. Paper money can reportedly carry more germs than a household toilet. And bills are a hospitable environment for gross microbes: viruses and bacteria can live on most surfaces for about 48 hours, but paper money can reportedly transport a live flu virus for up to 17 days." see http://content.time.com/time/specials/packages/article/0,28804,1914558_1914544,00.html

17. Meaning even where there was not an explicit rabbinic decree.

18. Unless one takes the view that there is NO risk now from a plague outbreak but there IS a risk from the vaccination. In Part 2 we will see why this argument is not tenable.

19. Note the application of this to mixtures of fish and meat, which Chazal rule is prohibited due to a danger, and which may be prohibited in very low ratios whereas meat and milk could be permitted in such amounts. This has application to Worcestershire sauce which has a small fish content.

20. Rav Moshe categorized smoking in 1981 as a long-term low risk, but his talmidim and family (in particular Rabbi Dr Moshe Tendler) attest that subsequent data and understanding of smoking makes it very clear that he would not do so today!

D] TAKING RISKS IN LIFE - STRIKING THE CORRECT BALANCE

19. ג' נשים משמשות במוך - קטנה מעוברת ומניקה. קטנה - שמא תתעבר ותמות ... דברי ר"מ. וחכ"א: אחת זו ואחת זו - משמשת כדרכה והולכת, ומן השמים ירחמו. שנאמר (תהלים קט"ז) *שומר פתאים ה'*

נדה מה:

Chazal debated whether a woman was allowed to become pregnant if there was a special and specific danger to her life. They conclude that we invoke the principle 'Shomer Peta'im Hashem' - ie one can undertake certain risky ventures and rely on protection from Heaven.

At what point does a danger become halachically significant? What are the relevant factors?

D1] LIKELIHOOD OF RISK

20. ועכצ"ל דזהו באמת חשש רחוק ומיעוט שאינו מצוי דלא חיישי רבנן להאי ועל זה יש לסמוך משום שומר פתאים

ש"ת אחיעזר חלק א - אבן העזר סימן כג

R. Chaim Ozer Grodzinsky understands that the relevant factor is how dangerous is the activity?

21. Rav Hershel Schachter explains that when one's risk of developing disease is a *miut hamatzui* [small, yet recognizable] one would be obligated to undergo the appropriate testing for the disease. Rav Schachter suggests that a *miut hamatzui* would be in the range of 10%... Thus, if a person's risk were in the range of 10%, he would be obligated to be vaccinated. [Footnote: He asserted that if the adverse reaction risk for a given vaccine was in the range of 1 in 1,000,000, the concept of *batla daito eitzel kol adam* would be applied to mitigate an individual's fear which might have prevented him from being vaccinated.]

DiPoce and Buchbinder, *Preventive Medicine, Journal of Halachah and Contemporary Society* 42 (2001), pg. 98

D2] ACTUAL IMMINENT OR POTENTIAL LATER RISK

22. דרבנן דאע"ג דכלל בדינו דאין לך דבר עומד בפני פקוח נפש ואין הולכין בפ"נ אחר הרוב זה דוקא ביש ודאי סכנת נפש לפנינו כגון בנפל עליו הגל דאז חוששין אפילו למיעוטא דמיעוטא אבל בשעתה אין כאן פקוח נפש רק שיש לחוש לסכנה הבאה בזה אזלינן בתר רובא כמו לענין איסורא דאל"כ איך מותר לירד לים ולצאת למדבר שהם מהדברים שצריכין להודות על שנצולו ואיך מותר לכתחלה לכנוס לסכנה ולעבור על ונשמרתם מאוד לנפשותיכם

ש"ת בנין ציון סימן קלו

Rav Yaakov Etlinger explains that when it comes to an imminent and actual threat to life we are concerned even for the most unlikely situations. However, when we are considering a possible future threat to life, we follow the majority.

D3] 'NORMAL' RISK

23. ואמר שמואל: פורסא דדמא - חד בשבתא, ארבעה ומעלי שבתא בתלתא בשבתא מאי טעמא לא - משום דקיימא ליה מאדים בזווי. מעלי שבתא נמי קיימא בזווי! - כיון דדשו ביה רבים - (תהלים קט"ז) *שומר פתאים ה'*

שבת קכט:

The gemara here adds the condition that the risk must be something undertaken standardly by normal people in society.

24. קלו) ומן השמים ירחמו - שנאמר שומר פתאים ה'. וצריך ביאור, מ"ש מכל ספק סכנה דדחי שבת ולא סמכינן אהא דשומר פתאים ה'! וצ"ל דאין האדם חייב להמנע ממנהג דרך ארץ. וממילא הוא כאילו אין בידו לשמור את עצמו ואז נשמר מן השמים. אבל היכא שבידו להזהר אינו בכלל פתאים, ואם לא ישמור את עצמו הוא מתחייב בנפשו ולא יהא משומר מן השמים.

קובץ שעורים כתובות אות קלו

R' Elchanan Wasserman rules that a person is allowed to take risks which are normal in society. A standard risk is considered to be something that a person cannot protect against, and so may rely on Heavenly hashgacha and will receive the protection from God that deserve of. But a risk which one CAN reasonably avoid will not be 'covered by' Shomer Peta'im Hashem and the person will be subject to the normal probabilities, with no recourse to Divine protection.

D4] NEED AND GAIN

25. ודע דאף בדברים שיש בהם סכנה מכל מקום בדבר שהוא מנהגו של עולם ודרך הכרח אין לחוש. דהרי ארבעה צריכים להודות וב' מהם הולכי מדברות והולכי ימים. הרי דאיכא בהם סכנה ומ"מ מותר לפרוש בספינה ולילך במדבר. ועיין באו"ח סי' רמ"ח לענין אם מפליגים סמוך לשבת, אבל בחול שרי. ולמה לא יאסור משום סכנה?! ... אלא ודאי דבדברים כאלה אשר לצורך העולם אין איסור כלל. וכן אין איסור לאשה להזדקק לבעלה אע"ג דהלידה הוי סכנה ... וכן משאמרו חז"ל דכל הדרכים בחזקת סכנה ועכ"ז מותר לצאת לדרך. ויצא לנו מזה דלפרוש לים הגדול לשוט היינו כדי לשוטט בעולם ולראות דברים חדושים וכדומה ... מהראוי להרחיק מזה רק לצורך מזונות או סחורה ... וכן ללכת במדברות ולכנוס בשאר סכנות במקום שאין צורך והכרח בודאי ראוי להרחיק אבל מה שהוא מנהגו של עולם אין לחוש לסכנה

שו"ת שם אריה חיו"ד סימן כ"ז

Rav Arie Leibush Bolchover²¹ writes that the adoption of normal risks in regular society is permitted if for necessary purposes. It is thus permitted to travel when needed and for a woman to bear children, even though both of those activities are inherently dangerous. Where the risks are however unnecessary²² or unusual one may not take them.

D5] WHO IS A 'FOOL'?

26. ול"ע אי שייך למימר האי טעמא שומר פתאים לתלמיד חכם שהוא יודע ומכיר ונזכר למופלג צדורו. ואפילו צאיניש דעלמא קשה דדבר ללדד כל כך להתיר הואיל ואיכא חשש סכנה

תרומת הדשן סימן ריא

Shomer Peta'im Hashem is an excuse for certain people and certain behaviors. But those people who should know better may not be able to rely on it!

D6] APPLICATION TO VACCINATIONS

27. Nor can the principle of *shomer peta'im* be invoked to justify assumption of a recognized danger that can be readily averted. That is clearly the import of the statement of R. Moshe Feinstein, Iggerot Mosheh, Even ha-Ezer, IV, no. 10, to the effect that, with the development of blood tests to determine whether prospective marriage partners are both carriers of the gene responsible for Tay-Sachs disease, one may no longer rely upon *shomer peta'im* in assuming the risk of that disease. For precisely the same reason, a danger posed by childhood disease for which a vaccine is available may not be assumed on the plea of *shomer peta'im*. That is certainly the import of the statement attributed to the late R. Yosef Shalom Eliashiv to the effect that "failure to immunize would amount to negligence." Perfection of vaccines that immunize against disease results in a situation in which failure to vaccinate is tantamount to willfully exposing oneself to *zinim pahim*. Once divine providence has made a vaccine safely available, any misfortune resulting from failing to avail oneself of immunization is to be attributed to human negligence rather than to divine decree.

Rabbi J. David Bleich, Vaccination, Tradition 48:2-3 (2015) pp. 53-54

28. **Argument 2:** I heard that the vaccinations against flu are dangerous, and that in the past, dozens of people were hurt by severe side effects.
Answer: That is true, but on the other hand tens of millions have been vaccinated and nothing happened to them, and they were saved from danger of death. Here as well, according to Halachah, we follow the majority. Here, it's no longer a majority of a thousand to one, but of a million to one. Moreover, since then more than thirty years have passed, and the medical field has amassed much experience as far as vaccinating against flu. As far as the swine flu vaccination, no problem has been identified so far. By contrast, many people have died from this flu, including here in Israel, where several dozen have died. In any event, we follow the majority and don't lead our lives based on the exceptions.

Rav Shlomo Aviner - Vaccinating Against Measles, 12 April 2019 - <http://www.ravaviner.com/search?q=vaccination>

21. Also author of Shu't Arugat Habosem. Rav of Zaslav, Poland. Died in 1881

22. The definition of what is 'unnecessary' will be fluid. The Shem Aryeh quotes 'sightseeing' as an unnecessary risk, although this may well be different in today's age of world tourism. It may also depend on the nature of the risk involved. Very low risks would presumably become more acceptable even as the level of need decreases. Also, what is 'necessary' will depend on the individual. A business trader, whom the Shem Aryeh classifies as permitted to travel to make a living could presumably get a local job which did not require travel, although earned much less money!

29. **Argument 3:** If someone is healthy right now, why should he, by his own actions, place himself in danger – however remote – just to save himself from a danger that does not exist at this moment, and perhaps will not exist in the future?
Answer: First of all, we said that this vaccination does not pose a remote danger but a danger that is considered halachically negligible. Rabbi Yisrael Lipschitz, the author of Tiferet Yisrael on the Mishnah, has already dealt with this regarding the vaccination against the Black Plague. He proved from several Talmudic sources that a person is allowed, by his own actions, to place himself in low-level danger of 1/1000 in order to save himself, in the future, from a high danger.

Rav Shlomo Aviner - Vaccinating Against Measles, 12 April 2019 - <http://www.ravaviner.com/search?q=vaccination>

30. ובמסקנת הדברים כתבתי דאם מדובר בסכנה רחוקה ביותר שאינה מצויה כלל חובה היא, ועכ"פ כו'ע מודי דהוי מדת חסידות, וק'ו שיש עליו לעבור טיפול שיש בו מעט סיכון כדי להינצל ממחלה שהוא עלול לחלות בה בסכנה מרובה וכך גם בנידון דידין, חייב אדם לחסן את ילדיו כיון שאין בחיסון סיכון כלל אלא על הצד המוזרות. ומאידך היעדר החיסון מסכן את הילדים בעצמם וק'ו בן בנו של ק'ו כיון שהיעדר החיסון יש בו סכנה לרבים. **ומ'מ נראה ברור ופשוט בזמנינו דלא ז' בלבד שמוטר לקחת חיסונים אלה אלא אף חובה היא למנוע סכנה מן היחיד והרבים. ואף אם בזמניהם לפני מאות שנה התחבטו, אין זה אלא משום שאכן היו ילדים שמתו כתוצאה מן החיסון כמבואר בדבריהם, משא"כ בחיסונים שבזמנינו חובה גמורה לחסן.**

רות רב אשר וייס - <https://en.tvunah.org/2018/12/20/the-obligation-to-vaccinate/>

This is also the very clear position of Rav Osher Weiss, who rules that there is an absolute obligation on parents to vaccinate their children.

31. *If however, most people are not afraid of something, then that is not considered a sakanah. Vaccinating against smallpox is something of an example of this: once the doctor says that the time for the injection has come, the halacha technically requires that people should make every effort to have it as soon as possible. Nonetheless, people don't have a sense of urgency as far as scheduling these shots. Therefore, even if in truth this delay involves some sakanah, we can apply the words of Chazal that 'Hashem guards the foolish', and therefore Heaven-forbid that one should violate the Shabbat in order to obtain this vaccination. On the other hand, if someone was in a place where if they would not obtain the smallpox vaccination on Shabbat they would have to wait 4-5 years for the next opportunity, since waiting for so long is something that people would be afraid of, that would possibly be considered safek pikuach nefesh, and one could violate Shabbat to be vaccinated. [Rav Shlomo Zalman Auerbach - Minchat Shlomo 2:29:d]*

One can see from this that Minchat Shlomo is of the opinion that if most people assume that not being vaccinated is a sakanah, then – although the possibility of danger is quite remote – in specific situations it would be permitted to desecrate the Sabbath in order to be vaccinated, and surely someone must obtain vaccination on a weekday since the public considers not vaccinating to be a sakanah, albeit a remote danger.

Rabbi Yitzchok Zilberstein, Journal of Halachah and Contemporary Society 69 (Spring 2015) pg. 100

- It is clear therefore that one should take a small risk to avoid a much larger one.
- It is also clear that the small risks involved in vaccination are normal in society and covered by Shomer Peta'im Hashem.
- However, the risk of catching the disease itself or reducing the herd immunity cannot be covered by Shomer Peta'im Hashem.

In Part 2 we will iy'H address the issues of:

- the halachic status of the risks of vaccination.
- the halachic methodology for weighing medical opinion.
- the extent of parental responsibility to vaccinate their children.
- whether it is halachically permissible to not vaccinate and rely on 'herd immunity'.
- whether schools can or should exclude children who have not been vaccinated.
- whether insistence on vaccination is a lack of bitachon - trust in God.
- the application of dina demalchuta dina and the role of 'religious exemptions' to vaccinations.
- chilul Hashem
- whether one should listen to Rabbis who do not require vaccination