

## COVID-19 Immunization: Should It Be Mandatory? A Conversation

The Freehof Institute of Progressive Halakhah, 2020 / תשפ"א

At this writing (Hanukkah, 2020), the world is rejoicing as the first shipments of the vaccines against COVID-19 reach their destinations. We are witnessing (we dearly hope) the beginning of the end of the pandemic that has caused so much death, suffering, and economic disruption around the world. All that is to the good, of course. But like many advances in medical science and technology, the arrival of the vaccines raises some important and perhaps difficult ethical questions. One concerns priority: given that the initial supply of the vaccines will be limited, to whom and in what order should they be administered? Another is the thorny issue of communal need versus personal choice: should the law mandate that all individuals be inoculated, save for those with valid medical reasons for exception?

We deal elsewhere on this site with the problem of [allocation](#) of limited medical resources. In this post, we want to take up the question of mandatory vaccination. To be sure, we've dealt with this one, too, in [a prior post](#), but there we were addressing specifically the immunization of children against diseases such as measles. The world-wide scale of the COVID-19 immunization effort, along with the fact that a significant proportion of our population is expressing resistance to the thought of taking the vaccine, prompts us to take another look.

As with all others, we focus upon this question from the standpoint of *halakhah* as understood from our progressive point of view. What guidance does the Jewish legal tradition offer us as we think about and argue it? Our format will be that of a conversation, beginning with members of the Freehof Institute's board of directors. We hope that the discussion will expand to include other writers, including those of our readers who want to submit comments, responses, and questions. You can do this either through our Facebook page (<https://www.facebook.com/freehofinstitute>) or via email ([freehofinfo@gmail.com](mailto:freehofinfo@gmail.com)).

\*\*\*\*\*

Rabbi Daniel Schiff

December 10, 2020

[Rabbi David Golinkin](#) has done a fabulous job providing a halakhic overview of this subject. It seems to me that it would be difficult to improve on his statement. He is unequivocal that vaccination should be mandatory apart from the few exceptional cases where it might pose a particular health risk to small sub-groups. He is also declarative that public institutions may absolutely refuse entry to those who decide not to be vaccinated:

Therefore, there is a halakhic obligation for Jews to vaccinate themselves and their children, unless their doctors determine that it's dangerous for that specific person to be vaccinated due to a pre-existing condition. Similarly, it's halakhically permissible for a school or a synagogue or the State of Israel to enact a *takkanah* or regulation that one must receive a vaccination and to prevent an unvaccinated person from entering a synagogue, a school, or a shopping mall.

I wholeheartedly endorse Rabbi Golinkin's position as the correct reading of Judaism. I urge that we adopt it as our own.

\*\*\*\*\*

Rabbi Amy Scheinerman

December 10, 2020

The purpose of vaccination is, as I understand, twofold: (1) to protect individuals; (2) to achieve "herd immunity" that protects the community. Herd immunity does not require that everyone be vaccinated. This, I believe, is the thinking behind allowing some

unvaccinated children to attend public schools. To the extent that being vaccinated entails some risk, we who are vaccinated assume that risk to gain the protect afforded by the vaccination, certainly, but also to protect our community.

I suspect that there will be people for whom the vaccine presents greater risk than it presents for many of us, especially for people with severe allergies. Pfizer and Moderna have both confirmed that their vaccine will cause some semblance of the viral illness. (Curiously and worryingly, the [CDC FAQ page](#) doesn't mention side effects at all.) Clearly, we need to know more, including: Are people with pre-existing conditions, such as lung and breathing conditions, at a greater risk in taking the vaccine? If it is determined that the vaccine is too risky for some people, would we ban them from entering our institutions? I think not.

Let's keep our eye on the science and not allow our sense of morality to eclipse the purpose of vaccination and what it takes to achieve herd immunity.

\*\*\*\*\*

Rabbi Mark Washofsky\

December 15, 2020

I want to look a bit more closely at a fundamental premise of halakhic thought on medicine, one that is discussed by Rabbi Golinkin (cited above by Rabbi Schiff) and in [numerous Reform responsa](#): namely, that the practice of medicine is a *mitzvah* and, more than that, a *hovah*, a religious obligation. The classic expression of this doctrine is that of the *Tur*, *Yoreh De`ah* 336 (R. Yaakov b. Asher, 14<sup>th</sup>-centiry Spain), who draws upon the *Torat Ha`adam* of R. Moshe b. Naḥman (Ramban, 12<sup>th</sup>-century Spain).

תנא דבי ר' ישמעאל ורפא ירפא מכאן שנתנה רשות לרופא לרפאות ... ומצוה היא  
ובכלל פיקוח נפש הוא והזריז ה"ז משובח ואם מונע עצמו ה"ז שופך דמים.

A *baraita* in the Talmud (*Bava Kama* 85b) learns from Exodus 21:19 that we are permitted to practice medicine... This “permission” is in fact a *mitzvah*, a commanded act, partaking of the duty to save life (*pikuah nefesh*). One who is zealous in its performance is praiseworthy. One who delays or refuses is akin to a shedder of blood.

The sources tell us that *permission* to practice medicine is required because, without such permission, humans might think that to heal disease through natural means is to violate God’s will. After all, we might naturally assume that disease comes upon us as a punishment for sin, so that the proper response is repentance (*t’shuvah*) rather than medicine. The *midrash* on Exodus 21:19 comes to reject that assumption. But Ramban and the *Tur* are not content with leaving the practice of medicine in the category of “permitted actions.” They insist that medicine is a *mitzvah*, an aspect of the duty to save life, which our tradition teaches us is the highest obligation that the Torah demands of us. It follows that the *obligatory* response - not merely a permitted response - to disease is to consult the physician, the expert practitioner of this commanded action.

It also follows that one is obligated to accept the physician’s advice, to the extent that the physician is confident in the diagnosis and treatment. Thus we read in *Shulḥan Arukh Oraḥ Ḥayyim* 328:10:

ואם רופא אחד אומר : צריך, ורופא אחד אומר : אינו צריך, מחללין.

If one physician declares that we must take a certain action on behalf of a patient while another physician declares that action to be unnecessary, we take the action, even though it involves a transgression against Shabbat.

To which the authoritative commentary *Magen Avraham* adds:

רופא אחד אומר צריך. אם לא רצה החולה לקבל התרופה כופין אותו.

*If one physician declares, etc.* If the patient does not want to accept the remedy, he is compelled to take it.

*Magen Avraham* derives this conclusion for R. David ibn Zimra (16<sup>th</sup>-century Eretz Yisrael), who writes in a responsum (4:67) that a patient who, out of piety, refuses a treatment that would violate Shabbat is deemed a pious fool (חסיד שוטה, *ḥasid shoteh*) and is coerced (בעל כרחו, “against his will”) to accept the treatment. The point is obvious and, based upon the premises set by the *halakhah*, unassailable: if one has a duty to save life, including one’s own, then one is not entitled to say “no” to that which will save life. We are not permitted to reject medical treatment, and others with the power to do so may compel or coerce us to accept it.

But this may not be true in all cases. Rabbi Yaakov Emden (18<sup>th</sup>-century Germany) introduces an important distinction into halakhic discussions of medical issues. We read the following in his *Mor U’kt`zi`a* commentary to the *Tur* and the *Shulḥan Arukh Oraḥ Ḥayyim*, chapter 328, referring to the words of the *Magen Avraham*:

נ"ל דווקא כשרוצה למנוע מהשתמש ברפואה הודאית (אף הסתמית ע"י רופא מומחה, כודאית חשיבא) ...  
אבל אם נמנע מפני שאינו מחזיקה לרפואה בדוקה, אפי' מדעת עצמו בלבד, כ"ש אם מסייעו רופא אחד (המתנגד לרופא שאומר צריך) אין כופין, וכ"ש אם חושש הוא שמזקת לו אותה תרופה שסדר לו הרופא האומר צריך.  
רק בחולי ומכה שבגלוי שיש לרופא ידיעה ודאית והכרה ברורה בהם, ועוסק בתרופה בדוקה וגמורה, ודאי לעולם כופין לחולה המסרב במקום סכנה, בכל ענין ואופן שנתנה תורה רשות לרופא לרפאותו.

It seems to me [that we may compel the patient to accept medical treatment] only if the patient is refusing a treatment of proven [*b'dukah*] effectiveness. (Any treatment prescribed by an expert physician [*rofe mumḥeh*] is presumed to be of definitive [*vada'it*] effectiveness) ...

However, if the patient refuses the treatment because he does not regard it as “proven,” even if he bases this decision on his own knowledge, let alone if another physician supports him, we do not compel him to accept it. This is especially true if the patient fears that the treatment prescribed by the first physician will be harmful to him.

However, in a case of illness or a visible injury, where the physician possesses definitive [*vada 'it*] knowledge, can make a clear diagnosis, and is dealing with a proven and tested treatment, should the patient whose condition is serious refuse to accept that treatment he may be compelled to do so. This applies in every aspect of medical practice authorized by the Torah.

Rabbi Yaakov repeats the long-accepted halakhic rule that medicine is a *mitzvah* and, in certain circumstances, mandatory. But in order that a particular therapy qualify as “mandatory,” he requires that it qualify beyond all doubt as *medicine*. To this end, the treatment must meet the standard of demonstrated effectiveness: it must be a “definitive,” “certain” (*vada 'it*) or “proven” (*b' dukah*) therapy for the disease or injury. The patient is obligated to accept such therapy. But she is under no obligation to accept medical treatment that is untested, unproven, or experimental in nature.

Thus far, Emden makes perfect sense. Why should an untested and unproven drug, surgical procedure, or other treatment be mandatory? We would not wish to force a treatment on anybody unless it has been demonstrated as effective, proper medicine. But Emden is not so clear on another question: *who* determines whether the treatment has been so demonstrated? In the first paragraph, he writes that the decision of a *rofe mumḥeh*, a physician whose expertise is based upon his certified medical learning and experience, is sufficient to establish that a therapy is “proven.” In the second paragraph, however, he seems to empower the patient to make that determination, so that if the patient doubts the efficacy of the treatment or for some reason regards it as potentially dangerous, she cannot be compelled to accept it.

Emden's equivocation is understandable in light of the status of medical practice in his day. Considering the low level of public confidence in physicians' knowledge and in the effectiveness of their prescriptions, it was quite reasonable to grant the patient a wide authority to choose what counted as "medicine" in her particular case. Much, obviously, has changed. Over the past several centuries, medicine has been transformed into a scientific discipline in the modern sense of that term. Its findings are based upon data that are collected, tested, duplicated, challenged, modified, and improved upon through the process that we call the scientific method. Scientific criteria now determine for the members of the medical profession whether a therapy, drug, or surgical procedure meets the standard of "proven" or "tested." It is the physician, therefore, and *not* the patient, who possesses the expertise necessary to make informed medical decisions. We trust the physicians to make these determinations because we trust science. Our level of confidence in what our physicians tell us is the direct result of our acceptance of science as the best available means of learning about the physical – and biological – universe.

Were he writing today, Rabbi Yaakov Emden would undoubtedly have a higher and less equivocal estimation of the reliability of "medicine." Given his respect for medical expertise, I suggest he would not have written that second paragraph. He would instead conclude that today, it is the *physician* – by which I mean the consensus opinion of the medical profession, based upon the data and the findings of scientific inquiry – who is to decide whether a particular treatment meets the standard of "proven" or "tested" as opposed to controversial or experimental. By contrast, the patient's resistance to the doctor's orders, whatever its real source, would carry little or no medical weight.

All of this suggests that Rabbi Yaakov Emden, and the entire tradition upon which his words are based, would regard the COVID-19 vaccines as *mandatory* medical treatment. This is because immunization, unknown in Emden's time, is now accepted as proper medical therapy and because the COVID vaccines have been established as effective – "definitive" and "proven" therapies – by the consensus opinion among epidemiologists. On the strength of this scientific opinion, the *halakhic* opinion is clear: these vaccines

should be mandatory for all, excepting those for whom the vaccines could pose serious and unacceptable health risks.

And yet...

We should not be too quick to dismiss the relevance of Emden's second paragraph. His words, after all, are quite consistent with the doctrines of patient autonomy and informed consent that form the foundation of [contemporary liberal bioethics](#). And in fact, [many people](#) are choosing to exercise that autonomy, [resisting](#) the vaccines and denouncing them as ineffective or dangerous. Much of this resistance, the latest manifestation of the anti-immunization [propaganda](#) that has gained much notoriety in recent decades, can be blamed upon the growing distrust in [institutional expertise](#) encouraged by, among others, [the outgoing U.S. administration](#). But sometimes, the resisters have a point, especially if their reluctance to accept the immunization stems from a particular community's [bitter historical experience](#) with the medical establishment. This doesn't mean that they are right to reject the vaccines; of course they aren't, and their resistance is quite likely to impede the progress in fighting COVID-19 and lead to many more deaths. It does mean that the institutions of science and medicine – and, for that matter, all of us who care about science and medicine – must recognize the reality of that loss of trust, a loss that may cause incalculable damage to us all. We have so much work to do in order to regain the trust of so many.

Should the COVID-19 immunization be mandatory? Yes, it should; no other response is halakhically correct or morally appropriate. But let the words of Rabbi Yaakov Emden remind us that in practice it is *people* – millions upon millions of individual people – who hold the power to decide whether to do the right thing. Our job is to persuade them to do so. We can do that, in part, by insisting that governments and institutions enforce vaccine requirements. We can do it as well through the personal example that we set through our own behavior. But we must also take the time to listen, with empathy and real concern, to those who resist that obligation. Unless we actually *listen* to them and try as hard as we can to engage them in productive conversation, we will never begin to rebuild their trust

in science and in the expertise of physicians, the ones qualified to tell us just what counts  
as proven and tested medicine.