

PART II

# ISSUES IN THE COMMUNITY



## NINE

# THE ROLES OF MEDICAL EXPERTISE AND RABBANIM IN THE PANDEMIC

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THE (HOPEFULLY) PAST COVID-19 PANDEMIC has brought many issues to the fore of the Jewish community's awareness. One of the more complex issues was that of the intersection—and sometimes collision—of two of the central pillars of authority in our world. On the one hand, we are trained to listen to doctors when they offer personal medical advice, and we take very seriously the general health guidelines offered by the medical establishment. On the other hand, we obey *rabbanim* when they tell us what the halachah is and how we ought to act.

But these two venerable institutions were often at loggerheads during the pandemic. It is no secret that many times, there was open confrontation between *rabbanim* and the medical establishment. Some people in the Rabbinic field almost always backed the medical professionals, while others seemed almost always to be in opposition to the medical establishment. Either way, there was an uneasy tension between the two. Even when they were in total agreement, the question was always: Are the doctors the ones laying down the law and the rabbi exhorting the community to follow their

directives conscientiously, or are the rabbis laying down the law based on medical information they received? We will try to focus here on this interaction between rabbis and doctors. Where does the primacy lie? What exactly is their relative position?

The purpose of this article is to try to draw an outline that will hopefully help us get a sense of the big picture. Many of the points touched on in this article have produced voluminous discussions in various Torah journals.

### PRIMACY OF HALACHAH

Let us first state an axiom that ought to guide us. Ultimately, it is clear that for *shomrei Torah u'mitzvos*, halachah takes precedence over any other consideration. Let us take the most elementary of examples. If somebody is given the option of either worshipping an idol or being killed, it stands to reason that the “medical establishment” would insist that the person worship the idol. Worshipping an idol has no negative medical significance, whereas a loaded gun will most assuredly kill the patient. Yet anyone who is an observant Jew will give up his life, in line with the unambiguous halachic imperative.<sup>1</sup> So when we ask

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1 *Sanhedrin* 74a; *Shulchan Aruch*, *Yoreh Deah* 157.

ourselves what takes precedence in principle, we have no doubt that the answer is: halachah.

It is not only a question of priority, but of jurisdiction. Thus, the Mishnah states:

*We feed a sick person based on the testimony of experts, and if there are no experts available, we feed him based on his own cognizance, until he says it suffices.*<sup>2</sup>

There are three parties in this Mishnah: the patient, the doctor, and “we,” i.e., the *rabbanim* to whom this halachah is addressed. Thus, it is the **rabbi** who feeds the patient based on the testimony of the expert or the patient. This is similar to secular jurisprudence, where it is the judge who lays down the ruling based on the medical testimony of the expert witness.

But when it comes to a situation like the pandemic, things are a lot murkier.

## SCIENTIFIC INPUT

I would like to start by carefully parsing what it is that we refer to as science and what it is that we refer to as *p’sak*.

The word “science” has many subcategories that are vital to identify in order to help us clarify our issues. To the uninitiated layman, all scientists and all science come with a capital S, as if they are infallible and absolute. That is obviously not the case. Let us enumerate the different areas where science has input.

The first and most basic area that science weighs in on is facts. These are items that are either 100 percent correct or 100 percent false and will always be so. For instance, the statement that “water catches fire” is either true or false, and it is true or false 100 percent of the time. Accordingly, when someone experiments and shows that in no setting does water burn, that becomes a statement of fact that science has placed before us. The scientist in this case is simply a diligent observer of reality.

The second area is an area of statistical probability. For instance, scientific observation can tell us that 90 percent of people with a certain illness will die

within a certain period of time. This statement is factual in the broad sense. But it is not telling me a fact. It is merely telling me a strong probability. Not only does this mean that it cannot be a definitive statement in any particular case, but it also means that the entire statistic might shift in the future. The rate of people dying may increase or decrease. It is the nature of things that have statistical probability that they tend to be more fluid. Whereas water will never, ever catch fire, certain diseases will shift and produce more or fewer fatalities than expected. It also means that the correlation we find may not be causal, and we may be mistaken in the very premise of the connection we find. The scientist in this case is detecting a pattern whose parameters and meaning he has hopefully identified.

A third area, which is even more vague, is the area of intuitive evaluation. For instance, a person comes to a doctor and is evaluated for his level of risk for an operation. There are some objective parameters, but at the end of the day, the decision rests strongly on an intuitive sense. This means that with enough experience, a doctor has gotten a sense of things and subconsciously senses or intuits what type of person will survive a certain procedure and what type of person will not. It may be something about the person’s general bearing, the look of flagging energy in his eyes, the color of his skin, and many other things of which the doctor may not even be conscious. But it all coalesces into a sense of things that leads the doctor to conclude, “This is probably going to work” or “This is probably not going to work.” This is an area where the experience and competence of the doctor is highly important. The scientist in this case is using intuition bred by years of experience.

And finally, there is a fourth area that I would call social or medical responsibility, wherein the doctor guides personal patients or communities vis-à-vis medical issues. Part of the doctor’s responsibility is to try to convince people to live a healthy lifestyle. In such cases, the doctor is speaking from a very

general sense of things. He is fulfilling an obligation of his, but it is hard to put it in the same rigorous framework as science. The scientist is acting out of communal responsibility.

To sum up, under the heading of “science” we have (1) hard facts, (2) statistical probabilities, (3) intuitive personal evaluation, and (4) general direction.

These different categories are important to bear in mind as we try to develop the relevant halachic framework to deal with the issues raised by the pandemic.

### RABBINIC INPUT

We also need to understand that the Rabbinic world also produces statements of various levels of definitiveness. First, we have unequivocal *p’sak*. For instance, that we save a person’s life even if doing so involves desecrating Shabbos is an unequivocal and undisputable halachic “fact.” In this case, the *rav* is simply quoting the appropriate halachic consensus.

Second, we have those areas of halachah that can be produced by logical deduction from previously established laws. This is the substance of most give-and-take of *pilpul* and *responsa*. While these are logical arguments, they are but arguments. By their very nature, they are open to counterarguments and disagreements. In these cases, the *rav* is using logic and *pilpul* to logically derive halachah in new cases based on known halachic facts in other, similar cases.

Third, we have evaluations. This applies usually to more “vague” halachic terminology such as “usually,” “almost certain,” etc. This is the area that most depends on the particular *rav*’s stature and experience, much as the doctor’s personal intuition depends on experience and expertise. In these cases, the *rav* is using his halachic intuition based on the totality of his prior knowledge and experience.

Finally, we have a fourth category of communal and personal responsibility that requires *rabbanim* to look at bigger issues and decide based on long-term

effects. Thus, while a particular situation may be technically permissible, it may be something that will become a slippery slope and have disastrous long-term consequences. In these cases, the *rav* is acting out of his communal responsibility.

### RELIANCE ON EXPERTS

Let us take a look at some of the cases where a *rav* needs to rely on outside experts, and halachah dictates as much:

#### 1. The case of an uncertain discharge:

*R. Elazar, son of R. Tzadok, says: My father brought two incidents from Tivin to the Sages in Yavneh for discussion. The first was an incident involving a woman who would repeatedly discharge items similar to red shells, and the local residents came and asked my father whether this rendered the woman impure. And my father asked the other Sages, and the Sages asked the doctors what causes this to happen. And the doctors said to them: This woman has a wound in her womb from which she discharges red items similar to shells. The Sages therefore ruled that the woman should cast them into water to ascertain their nature. If they dissolved, it proves that they are blood, and the woman is impure.*

*And another time, there was a similar incident involving a woman who would discharge items similar to red hairs, and she came and asked my father whether she was impure. And my father asked the other Sages, and the Sages asked the doctors, and the doctors said to them: The woman has a mole in her womb from which she discharges items similar to red hairs. The Sages therefore ruled that the woman should cast them into water, and if they dissolved, she is impure.<sup>3</sup>*

3 The obvious question is that if the doctors had determined the nature of the discharge, why did the rabbis need to test the items? And if the rabbis didn’t trust the doctors, why did they consult them in the first place? The *Rosh* and *Agudah* answer that the doctors suggested it as a theory to be tested by putting into water. See also *Beis Yosef* and *Darkei Moshe, Yoreh Deah* 191.

2. When measuring the distance of a place from the town for the purposes of *techum Shabbos*, we are told:

*You rely only on the measurements of a person who is an expert in surveying land. If we have a previously established techum, and an expert measures it and finds the techum to be shorter, or even [if he finds it to be] longer, we follow the opinion of the expert.*<sup>4</sup>

3. A woman who has a condition that causes bleeding during relations is deemed healed when the doctor says so.<sup>5</sup>
4. A doctor is to be consulted when there is an issue of washing one's hair with wine. The issue is whether or not the hair will become entangled and thus constitute a *chatzitzah* (interposition) preventing her from using a mikveh.<sup>6</sup>
5. Even in monetary cases, where "likelihood" is not accepted as evidence, but rather certainty is required, we accept the assessment of an expert.<sup>7</sup>
6. Similarly, regarding capital punishment, we accept as a certainty that people are healthy unless doctors testify that they have some sort of condition that will not allow them to live for a year.<sup>8</sup> Thus, it is the doctor's testimony that the victim was not a viable person<sup>9</sup> that will save the perpetrator from being executed.

#### DETERMINING THE EXPERT OPINION

But by far the most common interaction with the medical establishment is in the context of *pikuach*

*nefesh*, both on Shabbos and Yom Kippur. Let us examine the primary source on this topic.

*In the case of a pregnant woman who smelled food and was overcome by a craving to eat it, one feeds her until she recovers, as failure to do so could lead to a life-threatening situation. If a person is ill and requires food due to potential danger, one feeds him according to the advice of medical experts who determine that he indeed requires food. And if there are no experts there, one feeds him according to his own instructions until he says that he has eaten enough and needs no more.*<sup>10</sup>

The *Shulchan Aruch* elaborates, based on the Gemara,<sup>11</sup> on what to do in situations where there is a disagreement between the patient and the doctor or amongst the doctors themselves.<sup>12</sup>

Generally speaking, we would have expected to follow the majority opinion. Thus, if two doctors say that he does not have to eat, and one doctor says that he has to eat, we follow the majority.

But as long as there are two doctors who state that he must eat, even if one hundred doctors are of the opinion that he does not need to eat, we still feed him. This seems very strange. If we assume that the majority knows better than the minority, what difference does it make if the minority is two doctors as opposed to one?

The answer appears to be that when considering matters of *pikuach nefesh*, the rule is that even if there is but a small chance of a risk to life, one violates Shabbos or Yom Kippur. As the Gemara states clearly, if someone is buried under rubble, and there is a very

4 *Eiruvin* 58b; *Shulchan Aruch, Orach Chaim* 399:7–9.

5 *Yoreh Deah* 187:8.

6 *Maharik* 159; *Rama, Yoreh Deah* 199:2.

7 *Choshen Mishpat* 250:2.

8 *Rambam, Hilchos Rotze'ach U'Shemiras Nefesh* 2:8.

9 The language of the *Rambam* implies that the doctors are testifying about the nature of the disease or condition that the victim has rather than using an intuitive sense of the particular patient.

10 *Yoma* 8:5.

11 *Ibid.*

12 *Orach Chaim* 618.

small chance that he is living,<sup>13</sup> we still desecrate Shabbos for him. We attempt to save a life even if the odds are heavily against success.

### OUTLIER OPINIONS

So why is that if there are two doctors who say that he does not need to eat, and one doctor says that he needs to eat, we don't feed him? The answer seems to be that a single opinion is discounted; it is considered an outlier and is not really included in our deliberation.<sup>14</sup> But once two doctors have opined that he needs to eat, this opinion is no longer an outlier; it is a valid opinion. We look at this as a clear and definite possibility in our considerations. Therefore, it is as if there is a small chance that he needs the food, and we feed him.

### EXPERTISE

Until now, we have considered the quantity of the medical opinions. Thus, a majority of two opinions against one is accepted, but once each side consists of at least two doctors, neither of the opinions can be discounted.

But what about the level of expertise? Does that make a difference?

The *Shulchan Aruch* begins his discussion of the topic by saying that if an “expert doctor (*rofei baki*) is of the opinion, etc.” But he then continues by simply using the word “doctor.” It would seem that “expert” in this case is a general term, not meant to give particular significance to the level of expertise.<sup>15</sup>

There is, however, a debate regarding whether we factor in the relative expertise of the doctors<sup>16</sup>

or just the numerical majority. The bottom line is that we do not factor it in. However, if one of the doctors is by far more of an expert, then we follow his opinion. But this is only cited in the context of being extra cautious in feeding the patient. It seems from the wording that this would not be the case if this extraordinary expert felt that he could fast.

### NON-EXPERTISE

There is an interesting ruling in the opposite case. The *Shulchan Aruch* states that if the doctor tells us that he is completely unacquainted with the disease, his opinion is equivalent to a layman's.<sup>17</sup> One wonders why this is necessary to state. Why would one think a doctor unfamiliar with a specific condition would have any more authority concerning it than a regular person? Perhaps even if the doctor is not knowledgeable about a particular disease, his general sense of people and disease can make his guess more informed than that of a lay person.<sup>18</sup>

### DETERMINING EXPERTISE

The next question is how we determine who qualifies as an expert. The *Shulchan Aruch*<sup>19</sup> states that a person who states he is an expert is believed. There is an interesting reference in the *Teshuvah Me'ahavah*<sup>20</sup> indicating that licensure by the government is a further indication that someone is an expert.<sup>21</sup>

### RELIABILITY

Besides the issue of knowledge per se, there is also the issue of trust. Do we trust the doctor to tell the truth? At first glance, it is a strange question. What incentive would there be to lie? With regard to an

13 Yoma 83a.

14 This point may be relevant in discussions of whether “outlying” opinions need to be taken into consideration when calculating areas of *pikuach nefesh*.

15 See *Biur HaGra*, *Orach Chaim* 618:11, who explains this “expertise” to mean that the doctor is acquainted with this particular illness.

16 See *Tur* and *Beis Yosef*, *Orach Chaim* 618.

17 *Orach Chaim* 618:6.

18 This obviously will be an important consideration when dealing with new diseases about which no one is well-informed.

19 *Orach Chaim* 310:26, based on the *Yerushalmi* quoted by the *Rosh* (*Shabbos* 6:8).

20 135.

21 Similarly, the *Aruch Hashulchan* (*Yoreh Deah* 336:1) adds the requirement to be licensed, but that may have been prompted by the political reality that he was in.



expert witness in monetary affairs, one may suspect that the witness is not telling the truth, because he may have a vested financial interest. But in regard to issues of *pikuach nefesh*, what reason would the doctor have not to be truthful with us?

It seems that the primary reason would be that because a non-Jewish or secular doctor does not have the high regard that we have for Torah observance, he would be inclined to readily state that the patient has to eat despite the fact that he really does not have to.<sup>22</sup> Thus, on a practical level, the *posek* needs to use discretion to decide which doctor to trust.<sup>23</sup>

One of the factors that can lend credence to a doctor's opinion is the concept of "*lo mara nafsheih*," that he does not wish to tarnish his reputation. The source for this is the ruling that since idol worshippers were suspected of murdering Jews, one ought not to undergo medical procedures through them. There is, however, a distinction between a person who is deathly ill and a person who is merely sick. A person who is merely sick may have an idol worshipper heal him because, as the Gemara explains, *lo mara nafsheih*, a professional does not wish to tarnish his reputation. Therefore, a person who is a medical professional is assumed to always give correct evaluations and treatment. The exception is a critically ill person, whose death would not tarnish his reputation, as people will assume that it was simply his medical condition, not the doctor's malfeasance, that caused his death.<sup>24</sup>

This concept applies to many other areas as well.

- An expert chef is believed when he says that a nonkosher item that has been mixed into kosher food does not leave residual taste.<sup>25</sup>
- One may purchase *techeiles* from a non-Jewish businessman and trust him that it is indeed genuine *techeiles*.<sup>26</sup>
- One may purchase pomegranate wine—used for medicinal purposes—from a non-Jew and trust the businessman that it has not been mixed with nonkosher wine.<sup>27</sup>

Halachah does state that in certain instances, a non-Jewish doctor is not trusted in a non-*pikuach nefesh* setting.<sup>28</sup> But that refers to a specific case where he is touting a cure that he has administered and has a motive to lie in boasting about his own prowess.<sup>29</sup>

This rule of an expert wishing to protect his reputation would in contemporary times prompt us to put greater faith in the "establishment," contrary to popular inclination. Many tend to discount "Big Pharma" and official medical bodies while giving credence to every tweet of an unknown "truth-seeker." Yet halachah (and common sense) dictates the opposite. A company or person with an important reputation has a lot at stake. True, they may be mightily tempted to stretch the truth, but they will stop short of a real risk. The anonymous social media guru, though, has nothing to lose if and when he is disproven.

22 See *Mateh Ephraim* 618:2 and *Elef Hamagen* *ibid.* 6; *Biur Halachah* 618 s.v. "*Choleh she'tzarich*." This is particularly true nowadays, when medical malpractice lawsuits are common. Doctors have gotten used to "going by the book" lest they be sued.

23 *Biur Halachah* *ibid.* See also *Teshuvos Maharsham* 1:13, 24, and 25 about trusting the doctors in cases of *niddah*.

24 *Avodah Zarah* 27a, as explained by *Rashi* and *Tosafos*; *Yoreh Deah* 155.

25 *Chullin* 97a, according to *Tosafos's* explanation there. *Rashi* attributes our reliance on the chef to the concept of *meisiach l'fi tumo* (things said offhandedly tend to be true), while the *Rambam's* position seems to be that one may believe him on anything that will eventually become public knowledge (*avida l'igluyei*). Be that as it may, it does appear that the basic premise of *Tosafos* that *lo mara nafsheih* works in all cases can be assumed to be accepted by everyone. Similar to *Tosafos's* explanation, an expert may be believed that a certain type of bird is a kosher species (*Chullin* 63b).

26 *Menachos* 43a; *Shulchan Aruch*, *Orach Chaim* 20:1.

27 *Shulchan Aruch*, *Yoreh Deah* 114:5.

28 *Ibid.* 187:9.

29 See *Teshuvos Chasam Sofer* 158 and *Avnei Nezer*, *Yoreh Deah* 235.



## AREAS OF CONSULTATION

As we see from the above examples, consultation with experts—and medical experts specifically—applies in many areas. We certainly use their intuitive evaluation for determining whether a particular person is deathly ill or not. We have also seen the cases where their general knowledge is relevant, such as the woman with the discharges, where the doctors had not seen her but rather told us the general tendency of such things. Similarly, the doctors can tell us whether hair becomes entangled when washed with wine.

But what about direction from doctors based on a general sense of things, our fourth category of scientific information?

There is an interesting letter from R. Akiva Eiger, which says the following:

*I have warned many times, again and again, that all eating and drinking should be as the doctors have ordered. One should not disobey them even a drop, and one should stay away from the foods they forbid as if they would be prohibited by the Torah. This also includes their instructions not to leave home on an empty stomach and to drink hot beverages early in the day. Someone who disobeys the doctors regarding general conduct is sinning terribly, because dangers are worse than prohibitions, especially when it is dangerous for him and others by causing the illness to spread in the city, and the sin is terrible.<sup>30</sup>*

Similarly, R. Yisrael Salanter issued the following instructions during a plague:

*...And to listen to everything the doctors order about our conduct, because obeying their instructions is obligated by the Torah as well, and therefore, we need to preserve our life as best we can. Experience from previous times has taught us that anyone who listened to the instructions*

*of the doctors in eating, etc., did not have any disease.<sup>31</sup>*

It does not seem as if the doctors had very specific medical instructions based on the specific case as much as a general sense of what would be a healthy lifestyle during a plague. Although today we have a lot more specific knowledge of epidemiology, each pandemic is different.

When doctors issue advice at the beginning of a pandemic, it is based on a general sense of it and previous similar experiences. Invariably, many original hunches will be disproven, but the advice is certainly appropriate at the outset.

**NOW THAT WE HAVE** defined the doctor's role, where does the *posek's* role come in?

As we noted, the *posek* must use discretion to determine who is reliable. But a lot more important is the role of the *posek* in defining critical halachic terms.

We must define: What is *pikuach nefesh*? What is *darko shel olam*? What is the obligation of the individual to the community?

### **Pikuach Nefesh**

What is the percentage of risk that is considered *pikuach nefesh*?

If we try to find a specific number, we will find contradictions:

1. The *Rambam* states that one is permitted to dig out rubble on Shabbos even if there is "a one-in-a-thousand chance" that someone is buried there.<sup>32</sup>
2. The *Magen Avraham* states, "Labor is a natural phenomenon, and not even one in a thousand die from it."<sup>33</sup> This seems to take one-tenth of one percent (i.e., one in a thousand cases dies) as the rule of the thumb for *pikuach nefesh*.<sup>34</sup>
3. So too, R. Akiva Eiger writes that it is considered *pikuach nefesh* even if "one in a thousand"

30 *Igros R. Akiva Eiger*, p. 116.

31 *Ohr Yisrael*, letter 22.

32 *Hilchos Shabbos* 2:20.

33 330:3.

34 The Steipler is quoted (*Orchos Rabbeinu* 3:246) as saying that only one in ten thousand women die in childbirth, and yet

is endangered.<sup>35</sup> Yet earlier, the *Magen Avraham* states about the danger of a spider that fell into soup, “And it is but one in a thousand that dies from it.”<sup>36</sup>

From the above, it seems as if there is no fixed number to define *pikuach nefesh*. Moreover, there is no source in the Gemara for any specific number.<sup>37</sup> The expression “one in a thousand” does not seem to be a specific figure, but rather a turn of phrase. The *Chazon Ish* seems to maintain that it is the evaluation of the *posek* at hand, rather than any objective standard per se, that determines whether something is *pikuach nefesh*:

*It is for the wise men [i.e., talmidei chachamim] of the generation to evaluate with an experienced eye and decide in each case.*<sup>38</sup>

There is a fascinatingly similar conclusion in the *Beis Meir* regarding a very different halachah.<sup>39</sup> He is dealing with a witness identifying a corpse in order to allow the deceased’s wife to remarry. He quotes the *Beis Shmuel* in the name of the *Masas Binyamin* that for something to be considered an absolutely certain identifying mark on a body, it needs to be less frequent than one in a thousand people. The *Beis Meir* concludes that this evaluation is done by the “wise men of the generation.”

It seems clear that “one in a thousand” is not an empirical fact as much as an expression of rarity to be determined by a judgment call.<sup>40</sup>

The idea that certain measurements in halachah are based on the evaluation of the *posek* is rooted in a Mishnah regarding the measure of an “average egg”:

*The aforementioned egg is neither a big one, nor a small one, but rather an average one. R. Yehudah says, “One brings the largest of large [eggs] and the smallest of small [eggs], puts them into water, and then halves [the displacement] of the water. R. Yosi objected, “Who is to inform me what is the largest of eggs or smallest of eggs? Rather it is all judged by the perception of the observer.”*<sup>41</sup>

Similarly, the *Rambam* states that the size of a hole in a vessel that negates its status as a vessel (and thus renders it not susceptible to *tumah*) is the size of a pomegranate that is neither big nor small, but rather average “based on the estimate of the observer.”<sup>42</sup>

### Immediacy

Besides the percentage per se, there is also a difference between the *pikuach nefesh* being immediate (i.e., a sick person in front of us) and the chance of a dangerous situation arising, as noted by the *Noda BiYehudah*<sup>43</sup> and the *Chasam Sofer*.<sup>44</sup> This too needs the evaluation of *chachamim*.<sup>45</sup>

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one violates Shabbos on their behalf. He applies this to kidney stones as well.

35 *Teshuvos R. Akiva Eiger* 1:60.

36 316:23. R. Moshe Feinstein (*Igros Moshe, Choshen Mishpat* 2:73:7, refers to a five-percent chance of a serious illness as a “serious danger.” There is, however, no definition of what constitutes the actual border of *pikuach nefesh*.

37 *Rashi (Avodah Zarah* 35b) explains that the Rabbinic prohibition against a certain fish product (*chilik*) is because there is at least a one-in-a-thousand chance that a nonkosher product was mixed in with it. There too, it is not clear that this is a specific number. See also the *Ramban (Chullin* 99b) that the *Yerushalmi* seems to hold that one in a thousand is the measure of *bittul taam*.

38 *Pe'er Hador* 3:186; see also *Chazon Ish (Sheviis* 18:4).

39 *Even Ha'ezer* 17:24.

40 In *Teshuvos U'Kesavim MiMaran HaChazon Ish* (48), he says that if a situation of *pikuach nefesh* rests on three “maybes,” it is not deemed *pikuach nefesh*.

41 *Keilim* 17:6.

42 *Hilchos Keilim* 6:2.

43 *Tinyana Yoreh Deah* 210.

44 *Yoreh Deah* 336.

45 *Pe'er Hador* 3:186. In general (see *Kovetz Igros Chazon Ish* 202), the *Chazon Ish* was wary of sweeping *pikuach nefesh* leniencies for “potential cases,” as these could totally destroy Shabbos:

*In general, we must be cautious about pikuach nefesh that is not in front of us but rather may happen in the future. Because if we*

**Darko Shel Olam**

There is one more very critical factor that needs to be taken into account when deciding *pikuach nefesh*: *darko shel olam* (the way of the world) or *shomer pesa'im Hashem* (Hashem guards the simpleminded).

The source for this is the Gemara:

R. Beivai taught a Beraisa before R. Nachman: Three women may engage in relations with a soft fabric placed at the entrance to their wombs to prevent conception.

They are as follows: a minor, a woman who is already pregnant, and a nursing woman. A minor may do so lest she become pregnant and perhaps die...And the rabbis say: In all these cases, she may engage in relations in her usual manner, and Heaven will have mercy upon her and prevent any mishap, since it is stated, "Hashem guards the simpleminded."<sup>46</sup>

R. Elchonon Wasserman raises the issue of why certain behaviors are condoned because of "*shomer pesa'im*" and at other times, we speak of the gravity of *pikuach nefesh*.<sup>47</sup> His reply is that anything that is "*derech erez*"—or, as others later phrased it, "*darko shel olam*"—falls under the category of "*shomer pesa'im*." This seems to indicate that any behavior that has become the norm despite the risks associated with it can be pursued.<sup>48</sup>

Thus, the Gemara states:

If not for his wages, why did the worker go up a ramp, hang from a tree, and risk his life? [Therefore, the Torah warned us to pay his wages on time.]<sup>49</sup>

Similarly, when the *Chazon Ish* was asked what risk one may undertake in order to acquire a good esrog, his response was, "the same risk that one allows himself in order to do business with an esrog."<sup>50</sup>

We engage in an extraordinary amount of activity that carries risk. We travel in cars, we fly in planes, etc. It is not that we have calculated the risk; rather, these are seen as *darko shel olam*, normal human behavior, and as such are subject to *shomer pesa'im*. As a matter of fact, halachically, we have seen that a woman giving birth is considered to be in a state of *pikuach nefesh*, yet no one (in routine circumstances) has ever used this as a halachic reason not to bear children. Similarly, every *bris milah* is considered as carrying some risk,<sup>51</sup> and yet the Torah mandates it.

The *posek* therefore needs to consider whether the activity in question is routine enough such that although it would be safer not to engage in it, it is still permitted in the framework of *darko shel olam*.

**Public Effect**

There is another relevant factor that the *posek* must take into account when dealing with *pikuach nefesh* issues: the ripple effect of his *p'sak*.

Thus, the Chafetz Chaim ruled that when three hundred Jewish workers lost their jobs, they could work on Shabbos, but he would not publicize his ruling lest Shabbos be destroyed.<sup>52</sup> The *Chazon Ish* was very wary of creating a public sense of laxity, which in turn would constitute a *chillul Hashem*.

Similarly, some *poskim* hold that if a pregnant woman can stay near the hospital so as to avoid the need to drive there on Shabbos, it would be preferable, because when people see her in a car on Shabbos,

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*overdo it, we may yet permit opening all businesses in chutz la'aretz on Shabbos for fearing of losing parnassah. The decision must be weighed very carefully. One must also consider the chillul Hashem aspect [of a total and wanton disregard for Shabbos], and chillul Hashem is something for which one needs to give up his life.*

46 Yevamos 12b.

47 Kovetz Shiurim, Kesubos 136.

48 See also Shabbos 129b, Yevamos 72a, Avodah Zarah 30b, and Niddah 31a.

49 Bava Metzia 112a.

50 Igros Chazon Ish 2:73.

51 Avodah Zarah 27a.

52 Chut Shani, Shabbos 4:328, chap. 89.

not everyone will understand that she is on her way to the hospital.<sup>53</sup>

### THE CURRENT SITUATION

We have looked at some of the aspects of the interaction between doctors and *poskim* regarding situations of *pikuach nefesh*. It is clear that the factual information has to come from the experts in the field. However, there is great variation in what type of expertise we are seeking. Science has some facts to offer, but usually, the issues are not about facts. We also are not usually concerned with the evaluation of a particular patient. Rather, the issue seems to be general trends of the particular pandemic that have not yet fully been explored. Thus, we know that there is a pandemic, but we are not sure of how to go about preventing it. The medical field guides us with a general sense of how to approach it based on similar events in the past. But it is a far cry from hard and fast science. Yet these are the people whose advice the Torah enjoins us to heed. Looking at R. Akiva Eiger's letters,<sup>54</sup> it is clear that he relies upon the doctors; yet the doctors themselves were far from all-knowing. We rely on the medical professionals because they have expertise in the field closest to the challenge we presently face.

I would suggest a further point. The type of doctor who sees patients personally may not be the best expert to consult. The real issue is knowing what the statistics presented actually mean. What are the relative strengths of the studies, how reliable are they, and what are the implications? Someone whose specialty is in research, especially epidemiology, may be the best doctor for the *posek* to consult. One also wants a doctor whose sensitivities toward Torah and Yiddishkeit in general are strong. He must understand the importance of our various institutions and respond with an eye to that.

Now it is the turn of the *posek*. The *posek* must be able to judge the credibility of the person presenting the information and giving him advice. He must also

ask himself how immediate the dangers are and what are the consequences. This requires someone who fits the bill of "from the wise men of the generation." It means getting a correct sense of the situation and appropriately evaluating it in light of the *posek's* intuitive grasp of what constitutes *pikuach nefesh*.

There is another factor that needs to be considered when determining our guidelines, and that is the communal effect of these precautions. In hindsight, we can state that the pandemic took a strong toll on schoolchildren, who essentially missed two years of standard instruction. The Zoom or telephone instruction, and even in-school attendance with masks, severely reduced the effectiveness of the educational interaction. The shuls that were shuttered or severely limited for two years were dealt a severe blow from which they have not yet recovered. People either stopped coming to shul completely or made do with backyard minyanim. These backyard minyanim may technically satisfy the requirement of *tefillah b'tzibbur*, but they destroyed communities. The rabbi is no longer an effective leader, and the sense of communal responsibility has been shattered. The overall communal picture must be taken into account.

Especially painful is the fact that we do not have real communal authority. We have many communities and many *rabbanim*, but it is hard to describe anything as being true authority with a "capital A." Decisions that affect the entire community are at best a hodgepodge of individual decisions followed only by people who are anyhow inclined to follow those opinions.

### R. AKIVA EIGER AS A PARADIGM

It is important to take note of the various letters of R. Akiva Eiger regarding the epidemic in his times. The proclamations were his, but they relied on the doctors and urged people to follow the doctors' advice to the letter. With the same passion that he implored people to keep to all of the medical advice, he pushed hard to retain the minyanim in the shuls. It appears that

53 *Toras Hayoledes* 2:1.

54 They are to be found, along with a history of his myriad activities in those years, in *Bo Sidbakun* (R. Hirschler, published in 2021).

the government would rather have closed the shuls, but he implemented all of the doctors' suggestions in order to keep them open. He was as strict about following the rules as he was about keeping the shuls open and vice versa. He also had a very strong eye out for public relations. He knew that any aspersions cast on the Jews could result in very difficult consequences. He therefore made his rulings very public and had the government acknowledge how wonderful these rules

were and how the death rate was far below expected for the Jewish population despite the crowding. And diplomatically, he acknowledged the king's great role in this, and likewise, the king lauded the community for it.

We need to carefully study the actions of R. Akiva Eiger and learn about strong leadership, following doctors' orders, and keeping an eye out for the public image of the observant community.