

## *Vaccination in Halakhab and in Practice in the Orthodox Jewish Community*

By: ASHER BUSH

In 1998 a study was published in *The Lancet* linking the MMR vaccination with cases of autism. This study was widely circulated in both Great Britain and the United States. Despite the numerous other studies that confirmed the safety and value of these vaccinations, nevertheless, the publicity surrounding this article from *The Lancet*, particularly the follow-up broadcast on “Sixty Minutes,” led many parents to question the safety of childhood vaccinations. This study created a significant fear such that rates of childhood vaccinations decreased, in America to a relatively small extent and in Great Britain to a significantly greater extent. Correspondingly there was a marked increase in these diseases, particularly measles and mumps; this has included fatalities as well.

While most medical authorities doubted the accuracy and significance of this study, it was not until February 2010 that a retraction was printed in *The Lancet*. In May 2010 the General Medical Council of Great Britain found that the lead author of the study, Dr. Andrew Wakefield, had acted “dishonestly and irresponsibly,” and revoked his license to practice medicine in Great Britain. Prior to this, ten of the twelve coauthors associated with this paper had withdrawn their names. It is also worth noting that this now discredited study had focused on the link between Thimerosal (a mercury-based ingredient) and autism; that ingredient was removed from all vaccines other than influenza as of 2001 (the influenza vaccine is produced both with and without Thimerosal).

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Asher Bush, a graduate of Yeshiva University and RIETS, is the *rav* of Congregation Ahavas Yisrael in Wesley Hills, NY, and is currently the chairman of the Rabbinical Council of America’s Vaad Halacha. He has authored over fifty articles on various halakhic topics including medical issues, and his *Sho’el b-Shlomo* responsa address a range of contemporary issues from prayer and *kasbrut* to family life and education.

Nevertheless, as a result of the study and publicity that followed, many parents remain skeptical and either postpone or avoid vaccinating their children. Numerous organizations and websites still exist devoted to the “anti-vaccination cause,” casting doubts on both the efficacy and safety of the various childhood vaccines.

The Orthodox Jewish community has not been immune from this trend, with strong support in some communities for parental autonomy not to vaccinate. In the early part of the nineteenth century, when vaccinations were still new and risks were higher and knowledge was less, Rav Yisrael Lifshitz<sup>1</sup> ruled that even though slight risks do exist, the benefit of vaccination far outweighs the risk and they are permitted according to halakhah. Strikingly, in 1896 there was a case in London where an Orthodox Jew was imprisoned for his refusal to vaccinate his child, claiming his religion forbade him. The prosecutor in this case, who was also Jewish, turned to the Chief Rabbi of Great Britain, Rav Hermann Adler. The Chief Rabbi stated clearly that this man “was not justified in making the statements contained in the letter; that the most competent medical authorities were agreed as to vaccination being a prophylactic against small-pox, and added that its use was in perfect consonance with the letter and spirit of Judaism.”<sup>2</sup>

This issue came to the fore in the Orthodox community again in three recent situations. The first one was in Lakewood, NJ, where in 2008-2009 a number of school medical officials had sought to exclude unvaccinated children from attending. A number of leading rabbinic authorities associated with that community issued varying statements and rulings, some of which have been clarified and even reversed since that time.<sup>3</sup> The second event was the mumps outbreak in 2009-2010 that primarily affected children who had attended several Orthodox camps, and spread further following the summer when these boys returned to home and school. Even more

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<sup>1</sup> תפארת ישראל, מסכתא יומא פ"ה, בועז אות ג'.

<sup>2</sup> State Vaccination: with special reference to some principles of ancient Judaism; JH Levy, London.

<sup>3</sup> The events involved in each of these two episodes are detailed and clarified later in this document, with numerous documents quoted in full in the footnotes.

recently, in October 2011 there was an outbreak of measles<sup>4</sup> in portions of the Orthodox community in Brooklyn. As reported in the New York Times,<sup>5</sup> “The latest outbreak took place within a close-knit Orthodox Jewish population in Brooklyn, officials said. There have been similar outbreaks among Orthodox Jews in the past. Some of the children had not been vaccinated, perhaps of a preference within the community to delay vaccination, health officials said.”

The purpose of this article is to address two fundamental questions: firstly, whether there is a halakhic obligation to vaccinate, and secondly, whether schools have the right and/or responsibility to prevent unvaccinated children from attending.

### **Avoidance of Danger in Halakhah:**

Based on numerous sources in the Talmud,<sup>6</sup> the *Shulhan Arukh*<sup>7</sup> rules that halakhah obligates us to remove dangerous objects and animals from our midst. This is primarily based on the law of the Torah<sup>8</sup> to erect a *ma'akeh* (railing) to help ensure that a person will not fall from a roof or elevated location. This law is explained not only to apply to roofs and the like, but to create an obligation to remove any hazardous situation that could lead to death or severe

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<sup>4</sup> As this point there have been 11 confirmed cases in this outbreak. That is a particularly large number, as in the years since 1997 the number of cases in the United States has ranged from as low as 37 (in 2004) to as high as 140 (in 2008); before the routine use of the measles vaccine there used to be about 500,000 cases of measles each year in the United States with approximately 500 cases resulting in death (data from *About.com* Pediatrics, Vincent Iannelli, M.D.). Related to this, Dr. Kathleen Gallagher of the CDC in Atlanta has said, “Measles ranges from a pretty uncomfortable disease to a very serious one. For example, for every 1000 children who get measles in a developed country like the United States, 1 to 3 of them dies, despite the best treatment.”

<sup>5</sup> October 21, 2011

<sup>6</sup> כתובות מא; ועוד

<sup>7</sup> יו"ד סי' קט"ז, הו"מ סי' תכ"ז

<sup>8</sup> דברים כ"ב-ה'

injury. Additionally there is a personal obligation to avoid dangerous situations, foods and activities.<sup>9</sup>

In none of the various discussions does the *Shulhan Arukh* appear to mention any specific threshold of danger needed in order to create these obligations. Indeed there is no reason to suggest that the Sages did quantify the level of danger needed to prohibit an activity. Rather, it would appear that those activities generally considered dangerous must be avoided, while those generally considered safe need not be avoided, even though there may be risks involved in these activities as well.

This vagueness seems to leave with us the question whether in the judgment of Hazal these activities were assumed to cause danger in most cases. While such may indeed be the case, at the same time it is important to note that they did not work with statistics and studies, only common knowledge as enlightened by their wisdom and better judgment.

However, a more careful study of sources would indicate that these activities did not necessarily cause danger in the majority of cases, and as such could well have significant ramifications for the question at hand. The most basic case to examine is the original one in the Torah, that of making a *ma'akeh*, to prevent a person from falling off a roof and being killed. The Talmud and *Shulhan Arukh* ruled<sup>10</sup> that a roof need only be 10 *tefahim* in height (approx. 3 feet) in order for this obligation to exist. While it is certainly possible for a person to be killed falling from such a minimal height, it would certainly seem that this should not be assumed in the majority of cases, as in most cases a person would be careful and would not fall, and even if they would fall it is likely that injuries large and small would be far more common than death in a fall from a lower roof such as this.<sup>11</sup>

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<sup>9</sup> This is based on the words השמר לך ושמור נפשך. Whether this is a דרשה לבוש and באר הגולה (ח"מ סי' תכ"ז אות ע') or an אסמכתא is discussed in (שם סע' י"א). It is clear from (ח' ט"ו סי' ל"ט אות ב') that regardless of that מחלוקת, all agree that it is a full-fledged איסור.

<sup>10</sup> חושן משפט סי' תכ"ז סע' ה'.

<sup>11</sup> At the same time it should be noted that this example of low roofs is not the standard or majority of such cases, and more likely a roof would be a

More specifically, Rav Moshe Feinstein<sup>12</sup> addressed this matter when writing about the authority of rabbinic decrees that may seem to no longer apply. Commenting on the prohibition of drinking *mayim megulim*<sup>13</sup> Rav Moshe writes: “and here too in the case of the exposed waters that nowadays snakes are not commonly found so we permit drinking these waters, that there I have explained that the intention of Tosafot is that the matter that was legislated by rabbinic vote to not allow these waters was that even though the concern that a snake had drunk from the water was quite remote, which really was not a sufficient fear to create a prohibition, the Sages decreed that this small concern was sufficient to be considered as a danger and is included in the law of *pikuah nefesh*, although since the decree was to be cautious even in cases of low levels of danger, in those places where even this low level did not exist, the decree was never considered operative.”

These words of Rav Feinstein are deemed most important since they openly state that at least one of the rulings that are listed in *Shulhan Arukh* was never limited to those activities where the danger was present in most or even significant minorities of cases, as even that which he labeled a *hashash rahok* (distant concern) is included. Similarly, the *Shulhan Arukh*<sup>14</sup> mentions that “one should be careful not to place money into one’s mouth lest it have the saliva of a diseased person on it”; as unappealing as such a practice would be, it seems most unlikely that most or even large minorities of people who would do this would actually become ill. Following this understanding, it seems that many of the other activities men-

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full story or two tall and involve far more risk. This case was used as an example to demonstrate that the obligation to take these precautions exists even in cases where the statistical risks of mortality are limited.

<sup>12</sup> אגרות משה אר"ח ה"ב סי' ק'.

<sup>13</sup> This refers to the fear that venomous snakes might have drunk from water and other beverages left uncovered for significant times. The fear was that perhaps they emitted some of their venom and it would subsequently be consumed. It is clear from numerous medieval rabbinic sources that this law was observed in the breach, hence the discussions as to why it no longer need be followed.

<sup>14</sup> יו"ד סי' קט"ו סע' ה'. Alternatively, this is also explained by others to be due to the fact that so many different people have touched it.

tioned in the *Shulhan Arukh* may also be in this category, not being activities where danger exists in most or even a significant minority of cases and yet by law or by practice are to be avoided.

In fact, it would seem that had there been danger in the majority of cases, there would never have been any need for the Rabbis to legislate about such activities, as the Torah itself already prohibited such conduct.<sup>15</sup> And if there had been danger in a significant minority of cases,<sup>16</sup> there would have been a rabbinic obligation to avoid such danger even without further legislation. Additionally, assuming that the dangers were so clear and obvious, it is hoped that people would have avoided such situations whenever possible, with or without rabbinic rulings or advice; although, as will be addressed below, there may be great value in such legislation even when common sense would mandate the very same conduct.

[It should be noted that today some of these cases mentioned in the *Shulhan Arukh* would not be considered threatening at all based on our knowledge and standards, while others are clearly considered unsafe or dangerous.]

It is also clear that the Sages did not wait for specific danger to happen before they mandated action, as not every dog is equally vicious, yet they said that certain types of dogs may not be kept,<sup>17</sup> and not every stream of water was equally infested with leeches, yet

<sup>15</sup> The issue of acceptable and unacceptable risks is addressed in שו"ת בנין ציון שו"ת ציץ אליעזר ח' ט"ו סי' ל"ט, ח"א סי' קל"ז, and by Rav J. David Bleich in *Tradition* (Fall 2003, p. 97 footnote #4), as well as numerous other sources. It is given in the view of all of these authorities that once this 50% threshold has been reached, the activity is forbidden.

<sup>16</sup> עיין במשכנות יעקב סי' י"ז שהגדיר שמיעוט המצוי, הוא מעשר אחוז עד פחות מחמישים אחוז. ומצינו שכן חששו למיעוט המצוי בכל מקום, ועל בתוס' ע"ז מ: ד"ה כל ותוס' יבמות לו: ד"ה הא, ושו"ת הרשב"א ח"א סי' רע"ד (לענין תולעים) והו"ד בב"י יו"ד סי' פ"ד ד"ה ומ"ש המתולעים וכן בש"ך שם ס"ק כ"ח, ובשו"ת משיב דבר ח"א סי' כ"ח (לענין חמץ בפסח), ובמ"ב סי' נ"ה ס"ק ל"א בשם הפמ"ג (לענין סימני גדלות), ועוד.

<sup>17</sup> דתניא רבי נתן אומר מניין The prohibition states בבא קמא טו: מו, כתובות מא: שלא יגדל אדם כלב רע בתוך ביתו ואל יעמיד סולם רעוע בתוך ביתו ת"ל לא תשים דמים בביתך, which assumedly refers to those species known to be overly aggressive, and does not specifically refer to those animals that have previously attacked, as such animals would not be permitted even if they were securely chained up (as is permitted for those who have not yet attacked or done damage; see (רמב"ם הל' חובל ומזיק פ"ה הל' ט').

they said not to drink from any at night,<sup>18</sup> as in each of these cases whenever the danger was present, it was a real and serious one even if it was not commonly found or had caused harm in a given location.

This brings us to what could well be the key issue at hand regarding the question of vaccinations and many other contemporary issues as well. That question is whether all of these cases mentioned in the Talmud and *Shulḥan Arukh* were the results of specific rabbinic legislation or not. If it is understood that they were, this would rule out automatic addition of new cases of risk, absent such legislation. Rambam<sup>19</sup> writes, “many things were prohibited by the Sages because they include lethal danger... and these are they: a man may not put his mouth over a flowing pipe and drink, he should not drink from a river or pond at night lest he swallow a leech and not see it, and he should not drink exposed water lest a snake drank from them.” In this section of laws he includes only cases about which there was specific legislation.

The *Shulḥan Arukh* seems to take a more expansive approach, in some cases<sup>20</sup> employing the language *asrum ḥakhamim* (the Sages prohibited them), while in other cases<sup>21</sup> employing the language *tzarikh lizaher* (one needs to be cautious). Looking at the examples in this second category, such as not putting money into one’s mouth, and not allowing sweat to touch one’s food or get into one’s mouth, this would seem to include any case where common sense or common knowledge deems a conduct as unsafe.<sup>22</sup> If the language of the *Shulḥan Arukh* itself leaves this matter somewhat ambiguous, the language used by the Rema<sup>23</sup> makes it quite clear that he does not require specific acts of rabbinic legislation for an activity to be

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<sup>18</sup> חושן משפט סי' תכ"ז סע' ט'.

<sup>19</sup> הלכות רוצח ושמירת נפש פ' י"א הל' ה' ו'.

<sup>20</sup> יורה דעה סי' קט"ז סע' א', חושן משפט סי' תכ"ז סע' ט'.

<sup>21</sup> יו"ד שם סע' ב', ד', ה'.

<sup>22</sup> It should be noted that for none of the cases about which Rambam wrote *asrum ḥakhamim* did the *Shulchan Aruch* use the milder language *tzarikh lizaher*, as the cases about which this more mild language was used are not mentioned by Rambam.

<sup>23</sup> סי' קט"ז סע' ה'.

prohibited due to its dangerous nature, as he writes, “and similarly one should be careful (to avoid) from all things which bring one into danger, as danger is to be treated more strictly than matters of prohibitions.”

Accordingly, based on the words of the Rema there is little doubt that in any situation that is generally deemed dangerous, whether the Sages commented about it or not, whether it even existed in Talmudic times or not, these activities are not allowed. Whether Rav Yosef Karo accepts this same premise or forbids only those activities mentioned by the *poskim* remains somewhat of a question, although it seems more likely that he too did not limit the restrictions to such cases. At the same time it is important to bear in mind that the only activities under discussion are those where the mortality risk is “small”; if the risk is 50% or greater, then the obligation to avoid such dangers likely comes from the Torah itself, and on a rabbinic level with risks of 10% or more.<sup>24</sup>

While there are clear indications that some of these cases were indeed the result of legislation,<sup>25</sup> and in other cases it is assumed by the Rishonim that there was such legislation,<sup>26</sup> there are certainly cases about which there is no “evidence” one way or the other. Was there an act of rabbinic legislation proscribing placing coins in one’s mouth? Additionally, even if each of these cases was the result of rabbinic enactments, its reason would still need to be clarified. Was it a unique case that caught the Sages’ attention, or did they resort to such decrees to make their words binding and not to leave them to be followed or ignored based on personal discretion?<sup>27</sup> This may

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<sup>24</sup> As noted in (ח"א סי' כ"ג) שו"ת אחיעזר that those cases where חז"ל permitted one to take risks and to rely on the concept of שומר פתאים ה' were specifically those cases that were בחשש רחוק ומיעוט שאינו מצוי.

<sup>25</sup> A clear example of this is the law of מים אחרונים, mentioned in חולין קה: as being due to the danger of מלה סדומית, and as seen in ברכות נג: it is based on a פסוק.

<sup>26</sup> While (רא"ש ביצה פ"א סי' ה') clearly assume that the prohibition of גמרא is based on Rabbinic legislation, there is no source in the גמרא that states that.

<sup>27</sup> This concern is directly addressed by רמב"ם (הל' רוצח ושמירת נפש פ' י"א הל' ) where he comments, “and anyone who violates these rules and says, ‘I will endanger myself and this is of no concern to others’ or ‘I am not



well be culled from the words of Rav Moshe Feinstein,<sup>28</sup> who explained *mayim megulim* (exposed waters) as being a distant fear that the Sages instructed us to take very seriously despite the low probability of encountering it. If this last idea is correct, it would seem that in each and every case where sound medical knowledge or common knowledge of our day informs us a conduct is dangerous, we would also need to refrain from it, even lacking specific rabbinic decrees.<sup>29</sup>

It should be noted that on a practical level, the fact that hazardous activities are considered as halakhically binding indeed makes a major difference in daily conduct, as no observant Jew would eat meat cooked together with fish, as such is mentioned in the Talmud and *Shulḥan Arukh*. At the same time, convincing the Orthodox public that smoking is forbidden in halakhah has been a most formidable task (see 2006 ruling by the Vaad Halacha of the Rabbinical Council of America on *The Prohibition of Smoking in Halacha*, found at [www.rabbis.org](http://www.rabbis.org)).

### Refraining from Dangerous Activities or Engaging in Proactive Behavior:

Strikingly, the conduct mandated to avoid the dangerous situations mentioned by Ḥazal are almost exclusively in the negative, meaning that they have instructed/ruled to refrain from doing certain risky activities or to remove certain dangerous objects/situations, but there is almost no mention of proactively engaging in healthy or

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worried about these matters,' such a person is to be punished..." This is also reflected in the text of the (ח"מ סי' תכ"ז סע' י')

<sup>28</sup> אגרות משה או"ח ה"ב סי' ק'

<sup>29</sup> The idea that Ḥazal used the halakhic mechanism and made formal decrees to protect other halakhic values is found in other areas as well. This was done even though it might seem that common sense or good judgment would have been enough reason to refrain from a certain activity. Other examples of this include the declaration of *Kitvei ha-Kodesh* as being *tamei* in order to prevent the storage of *terumah* with *sefarim*, the *takkanah* of Ezra mandating *tevillah* following intimacy to discourage *Talmidei Hakhamim* from living excessively frivolous lives, and the mitzvah of *mayim aḥaronim*, just to mention a few examples.

beneficial activities such as exercising to safeguard one's health, as being part of this halakhah recorded in *Shulḥan Arukh*.<sup>30</sup> The one possible exception to this is where the Rema<sup>31</sup> mentions that in times of plague one should flee from the city, specifically instructing to do so at the start of the plague and not to wait until it has spread further and the danger is greater. This course of action which has been mandated by the *poskim* seems most analogous to vaccinations, each being an established means to avoid disease. Accordingly, following the Rema, who understands that the cases mentioned in the Talmud and *Shulḥan Arukh* are not specifically those that were legislated but also include those that were commonly considered as unnecessarily risky, this could have significant ramifications for the question of whether there is an obligation to vaccinate.

A number of the later *poskim* speak of smallpox epidemics, writing that parents are obligated to remove their children from such dangerous locations, and that any parent who does not is guilty of a grave sin.<sup>32</sup> It would seem that the natural corollary to this would be to conclude that when epidemics or pandemics are feared, vaccinations would be obligatory, similar to the “obligation” to leave the city. Accordingly, just as the failure to flee the city is subject to the label “*ḥayavim b-nafshotam*” (liable for their own fate),<sup>33</sup> so too should failure to vaccinate be viewed in cases of epidemics. The fact that the N1H1 virus did not spread as widely as feared in 2009-2010 does not refute this idea, as the Rema<sup>34</sup> has written “that one need be more concerned with possible danger than with possible prohibitions.”

If there is any one potentially significant difference between fleeing from a plague and vaccinating, it might be that flight (and all of the other activities mentioned in *Shulḥan Arukh*) is viewed as being “risk free,” while vaccinations may include certain small risks, miniscule as the percentages may be. Although given the negligible risks involved with vaccination, the question needs to be asked, is

<sup>30</sup> יורה דעה סי' קט"ז וחושן משפט סי' תכ"ז.

<sup>31</sup> יו"ד סי' קט"ז סע' ה', וע"ע בה"ט או"ח סי' תקע"ו ס"ק ג' ומ"ב שם ס"ק י"ד.

<sup>32</sup> של"ה, והו"ד בה"ט או"ח סי' תקע"ו ס"ק ג' ומ"ב שם ס"ק י"ד.

<sup>33</sup> באר היטב או"ח סי' תקע"ו ס"ק ג'.

<sup>34</sup> יו"ד סי' קט"ז סע' ה'.

this procedure with its small risk of minor pain, swelling and slight fever (the more “common risks” associated with immunization vaccinations) any less safe than flight from town in times of plague, particularly when travel was far more unsure and safe destinations were not to be taken for granted? This even remains true today, as the statistical odds of a fatal traffic accident are likely greater than that of a vaccination fatality, and so too for accident-related injuries versus non-lethal side effects of vaccinations.

Even assuming that in times of epidemic there is an obligation to vaccinate, this does not tell us whether the obligation applies where there is no fear of epidemic. Factors arguing against such an obligation would be the following:

- 1) Perhaps we should consider the (miniscule) risk factor of vaccination to be a significant enough that such an obligation cannot be imposed. Or a more likely possibility:
- 2) It might be understood that each and every case mentioned in *Shulhan Arukh* is obligatory only because there was a specific act of rabbinic legislation. If this is so, when it comes to mandating actions, prudent as they are, unless the danger level reaches or exceeds 50% (and 10% on a rabbinic level), one would not be obligated to take (positive) actions lacking this rabbinic legislation. The basis of this idea is “*shomer petayim*” (“G-d watches over the fools”), which justifies many activities that do in fact seem risky, the logic being that so many people are engaging in a seemingly dangerous activity and not harmed by it, ipso facto it cannot be considered as excessively dangerous and therefore prohibited (as G-d must be protecting the multitudes who engage in this otherwise foolish activity). Or:
- 3) Given the success of many vaccination programs, these diseases, as dangerous as they can be, have been reduced to statistical rarities.

Regardless of the resolution of the first two issues, this third issue may well decide the halakhah for all practical purposes. It is clear that in those cases (examples of which have existed throughout history) where the number of people infected exceeded 50%, according to all understandings, halakhah would mandate that any unvaccinated person protect themselves with immunization.

However, with most of the diseases currently being vaccinated for in Western societies, this infection rate of 50% generally is not reached and likely never was. (The 10% threshold may be reached in flu epidemics but certainly not for the other diseases in question.) Accordingly, for this discussion it is best to separate between the two scenarios being addressed.

- A) In cases such as yearly influenza vaccinations given as a precaution to avoid the flu, even though reaching the 50% threshold is generally not a real concern, the 10% threshold could certainly be a realistic fear if vaccinations were not provided. But regardless of the exact statistics, fear of the various strains of influenza is a real concern, as is evidenced by the high level of concern demonstrated by physicians and public health officials. As such, this would clearly seem to fit in to the words of the Rema who wrote of the need to be cautious in all such cases. This would be even truer for those portions of the population that are more vulnerable, such as senior citizens, pregnant women and children.
- B) In the case of childhood immunizations the ratios of infection are even lower, with very few children ever getting these diseases. With the numbers of reported cases being so small as to fall into the halakhic category of *mi'ut sh-eino matzu'i* (a rare/uncommon occurrence), there would seem to be no obligation to vaccinate.

However, in each of these cases the statistics really do not tell the true story, as the number of infections seen does not take into account that this low rate is due to the immunization of so many people. For influenza this is done at or prior to the onset of the season, and for most of the other diseases for which immunization is standard in our society, it is done on the schedule recommended by physicians. It would seem that the only way to get close to accurate statistic regarding this matter would be to study the rates of infections prior to the advent of the various forms of immunization.

The following three paragraphs are from former Surgeon General of the United States, David Satcher, M.D., Ph.D., testifying be-

fore the House Committee on Government Reform;<sup>35</sup> each helps provide a perspective on the success of vaccination programs and on how prevalent these diseases were not so many years ago.

The Polio vaccine was licensed in the United States in 1955. During 1951 to 1954, an average of 16,316 paralytic polio cases<sup>36</sup> and 1,879 deaths from polio were reported each year. As of 1991, polio caused by wild-type viruses had been eliminated from the Western Hemisphere.

A physician entering practice today may never see a case of meningitis due to *Haemophilus influenzae* type b (Hib). Before the introduction of effective vaccines, in 1988, approximately one in 200 children under the age of five developed invasive Hib disease. Hib was the leading cause of bacterial meningitis in children under age five—accounting for 60 percent of all cases. From 15 to 30 percent of affected children became hearing impaired and about 420 children died every year despite antibiotic therapy. In addition, Hib vaccine has prevented the leading cause of acquired mental retardation in the U.S. By 1998, vaccination of pre-school children reduced the number of Hib cases by more than 99 percent.

In the 1960's many people witnessed first-hand the terrible effect of rubella, commonly known as German measles. During an epidemic between 1964 and 1965, about 20,000 infants were born with deafness, blindness, heart disease, mental retardation and other birth defects because the rubella virus infected their pregnant mothers.<sup>37</sup> Today, thanks to nearly universal use of an effective vaccine, the rubella virus poses virtually no threat to the children of expectant mothers.

What emerges from these data is that at no time in recent memory did any of these dreaded diseases (influenza possibly not

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<sup>35</sup> Testimony given August 3, 1999; it is available on line at [hhs.gov/asl/testify](http://hhs.gov/asl/testify).

<sup>36</sup> With a US population of approximately 160,000,000 that would be an infection rate of approximately .01%. By the mid-1960s there were typically less than 100 cases per year in America.

<sup>37</sup> In 1969 there were 57,686 reported cases in America; by 1983 there were less than 1000.

included) infect the majority or even a halakhically significant minority of the population. At the same time these were correctly treated as dreaded diseases, causing fear and worse. When safe vaccinations became readily available, there was little question as to the prudent course of action to be taken; accordingly, both adults and children were routinely vaccinated without any hesitation.

While any or all of these factors could be considered significant, it is the third factor, namely, the low rate of infection (due in large measure to the great successes of the vaccination programs in curtailing rates of infections), that seems most compelling to the *poskim*. Rav Shlomo Zalman Auerbach and Rav Yehoshua Neuwirth have both ruled that a parent cannot be compelled to vaccinate their child, regardless of how irrational their concerns may be.<sup>38</sup> Similarly, Rav Hershel Schachter, Rav Mordechai Willig and Rav J. David Bleich are all of the same opinion.<sup>39</sup> Accordingly, had the risk of infection and major consequences been significantly higher, these *poskim* would have ruled it a parental obligation to vaccinate one's child rather than just the right and prudent course of action.

However, it must also be noted that the rulings of these *poskim* did not come in response to situations where there was either a legal obligation or school policy requiring vaccination. Significantly, it is the consensus of these *poskim* that even though a parent may have the halakhic right to refrain from vaccinating their child, that does not exempt them from following the law or school policies, particularly when it could well mean jeopardizing the health and safety of others.

Additionally, Dr. Avraham S. Avraham quotes these same leading Israeli *poskim* saying that while we cannot force such vaccinations, parents should be strongly encouraged to vaccinate their children, personal hesitations notwithstanding.<sup>40</sup> In fact, Rav Neuwirth is of the opinion that doctors are obligated to try to persuade such parents to vaccinate their children. Similarly, each of these three

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<sup>38</sup> (5) נשמת אברהם ה' חושן משפט סי' תכ"ז:3 and further communications with Rav Neuwirth (November 2011).

<sup>39</sup> Oral communications, June 2010.

<sup>40</sup> (5) נשמת אברהם ה' חושן משפט סי' תכ"ז:3.

American *poskim* were distressed and somewhat incredulous that parents should act so irresponsibly by refusing to vaccinate their children in the face of this universally accepted medical advice.

Accordingly, the opinion of these *poskim* is that from the formal halakhic perspective there is no obligation to vaccinate one's child to prevent the various diseases that children are routinely immunized from. However, this in no manner minimizes the fact that this is indeed the prudent course of action (barring specific medical issues that countermand this indication). This also does not address the broader public policy issues for a community, a school or health care facility that formulates all sorts of rules for the well-being of the staff, students/patients and the larger community.

A significantly different approach is reported in the name of Rav Elyashiv.<sup>41</sup> This states that since childhood vaccinations are the accepted and standard practice, it is incumbent upon parents to provide them for their children. This is assumedly based on the

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<sup>41</sup> "Dangerous Disease & Dangerous Therapy," Rav Akiva Tatz; Targum Press. From page 48: "The question was put to Rabbi Elyashiv, who ruled that the parents should accede to immunization despite their concerns. When asked if the reason behind this ruling was the issue of fairness and the obligation to share responsibility, Rabbi Elyashiv indicated that it was; his reason was that *since immunization of children is normal practice* throughout the world, one should follow that normative course. In fact, Rabbi Elyashiv went so far as to assert that failure to immunize would amount to negligence." He then continues, "Refusing childhood immunizations on the basis of unsubstantiated fears of vaccine side-effects is irresponsible and out of order halakhically. The danger of precipitating epidemics of measles, poliomyelitis and other diseases with potentially devastating complications is far more real than the dangers attributed to vaccines on the basis of anecdotal claims. Until objective evidence to the contrary accrues, the halakhically correct approach is to do what is normal. In addition, a legitimate government's legislation concerning standards of medical conduct adds weight to their halakhic acceptability."

As is well known, the "theories" that suggested that the MMR vaccine was responsible for autism have been thoroughly discredited by all medical authorities, not to mention that Thimerosal (the mercury-based ingredient alleged to have caused the problem) is no longer used in the production of these vaccines.

words of Rambam,<sup>42</sup> who describes healthy living as part of the proper service of G-d. In that chapter he details proper practices of eating, sleeping, and exercise needed to best maintain one's health. These words are based not on any risk-benefit relationship, but on what is deemed prudent and normative. Rambam's definition of prudent and normative is based not necessarily on what our ancient Sages ruled or recommended, but on the best medical advice available in his and in each succeeding generation.<sup>43</sup> Following these words of Rambam, it is understood why Rav Elyashiv would have stated that parents indeed need to vaccinate their children. In further conversation, Rav Schachter found significant reason to favor this approach as well.<sup>44</sup> It is also likely that pursuit of such universally accepted courses of healthy living would be a fulfillment of the words "take watch for yourself and protect your life."<sup>45</sup>

At the same time, the other *poskim* who do not consider vaccinations obligatory would still view the practice as part of the fulfillment of a mitzvah even though there is no formal obligation to do so.<sup>46</sup>

More recently<sup>47</sup> Rav Elyashiv has been quoted in writing as saying that the parents of vaccinated students have the right to insist that all other classmates be vaccinated so as not to subject their children to unnecessary risk of illness.<sup>48</sup>

<sup>42</sup> הל' דעות פ' ד'.

<sup>43</sup> This is how Rav Shlomo Zalman Auerbach (as quoted in 'נשמת אברהם ח' (חושן משפט סי' תכ"ז דף רכ"ב) understood the words of Rambam.

<sup>44</sup> August 2010.

<sup>45</sup> השמר לך ושמור נפשך (דברים ד':ט').

<sup>46</sup> See משנה ברורה (ח' חו"מ סי' תכ"ז ג:4) who applies the words of the משנה ברורה to this case for those *poskim* who do not view vaccinations as obligatory. ומצוה להנהיג עצמו במדה טובה והנהגה טובה לשמור בריאותו. כדי שיהיה בריא וחזק לעבודת הבורא יתעלה.

<sup>47</sup> חוברת הלכה ומעשה, מחלות חורף: חיסונים, וז"ל "באם רוב הילדים בכיתה מחוסנים מפני נגיף כלשהו, וישנם ילדים יחידים שההורים שלהם לא חיסנו אותם, ובכיתה יש הורים החוששים מכך, יכולים ההורים לדרוש מהיחידים לנהוג ככלל ולא להפיץ למזיקים".

<sup>48</sup> This is indeed a valid concern as most vaccinations have some degree of failure; as such, some vaccinated children may not be immune despite having taken appropriate precautions. The presence of unvaccinated chil-



At this point the matter would seem rather simple: according to one approach there is an obligation to vaccinate even when the statistical risks are relatively low, and according to the other approach it is not an obligation, but still remains the sensible and prudent path to follow. There is no thought in halakhah or *hashkafah* to suggest that there is something less than desirable in providing the best preventative care possible. Needless to say, there may be isolated cases where such vaccinations would not be in the medical best interests of the child and should not be done, but such cases are indeed few and far between.

### **The Limits of Rabbinic Authority and Prerogative:**

A striking phenomenon has developed in recent years that *rabbanim* have been asked to play an increasingly significant role in medical decisions. This is not referring to areas where rabbinic guidance and/or rulings are called for (such as the permission/obligation to perform an abortion, the determination of the end of a life or the possible obligation to treat hopeless terminal patients); rather this speaks about the increased involvement of *rabbanim* in routine and not so routine medical decisions regarding whether to treat, which course of treatment to pursue, alternative medicines and the choice of physician or hospital. While this approach is certainly well intended, in many cases such involvement is not only misplaced, it can even be dangerous. It may be 'misplaced' as this is not a matter of halakhah or even *hashkafah*, as the Torah and halakhah clearly mandate taking care of one's health in the best possible way, deferring to expert medical opinion to determine what that best way will be.<sup>49</sup> It is potentially dangerous as decisions affecting life and death or serious matters affecting health may be made by individuals simply not qualified to do so. It seems that in some cases this increased rabbinic involvement may be playing a

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dren simply creates an unnecessary risk as it enlarges the pool of potential carriers of the disease.

<sup>49</sup> As should be noticed, each of the rabbinic authorities consulted in preparing this document are doing exactly that, deferring to the appropriate medical authorities and expressing their discomfort with the idea that in the name of Torah appropriate medical treatments are ignored.

significant part in the anti-vaccination movement in segments of the Orthodox community, making it much harder to create an environment where such healthy and prudent practices are a matter of course.<sup>50</sup>

This is not to say that there isn't a role for *rabbanim* in some cases, as there certainly would be in a case where the risk-benefit relationship might either obligate or prohibit a particular course of action, or if a patient was given several choices as to which treatment to pursue and guidance or comfort was sought out from a pastoral point of view.

### **The Well-Being of the Community:**

It is a given that all schools have an obligation to protect the health and well-being of their students. This duty is even more pressing in a yeshiva where both the physical and spiritual well-being of the students is a daily concern. Common health and safety regulations include: sick students are sent to the nurse or home, students are generally not permitted to possess medicines (which instead are administered by the nurse), and dangerous objects such as knives may not be possessed. More recently many schools have forbidden foods that cause severe allergic reactions in others, such as peanut butter. In a yeshiva the rules often go much farther, concerned with not just the physical well-being of the students but their spiritual and moral development as well. This often includes very specific dress codes, as well as regulation of cell phones, electronic devices and, depending on the school, reading material and forms of entertainment.

Following this well-accepted pattern, it would seem that rules and regulations mandating vaccinations are just another example of a rule enacted for the health and well-being of the students and faculty alike. Accordingly, even if there were no Halachic obligation to vaccinate oneself or one's child, the school would be well within

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<sup>50</sup> Distressingly, numerous anecdotal reports have come of well intentioned rabbinic advisors counseling against surgeries, radiation and chemotherapy in favor of their own ideas.

its mandate to insist on vaccinations and to make this a requirement for attendance.

It has been suggested by some that a yeshiva has no right or business establishing and enforcing (mandatory) vaccination rules; this idea is more than difficult to accept. Even if a parent is particularly worried about the (supposed) ill effects of vaccinations, a medically unfounded concern for otherwise healthy children, this does not give them the right to ignore the rules established for the communal well-being. They are not forced to attend this school (or any other school for that matter, as home schooling is an option) if they choose not to conform to this or any other rules. The idea that parental autonomy should supersede school rules effectively means that there are no rules. Dress codes, which exist formally and informally in every yeshiva, are not left to parental discretion; so too those schools that regulate and restrict which forms of entertainment and media the students enjoy (on and off school premises) have specifically stated that they are not leaving it up to personal and family practice to decide these matters. The rules are imposed with the understanding that they have been deemed to be in the best interest of the students and represent the value system and world view of the Yeshiva; there is no reason to suggest that health and safety standards should be treated any differently.

### **The 2009-2010 Outbreaks of Mumps in the Orthodox Community:**

The 2009-2010 outbreaks of mumps in segments of the Orthodox community are most instructive to this entire topic. The widespread use of the MMR vaccinations has rendered mumps a most uncommon disease. The mumps vaccine was first licensed in the United States in December 1967. In the year 1968 there were 152,209 cases reported to the NNDSS, and by 1993 there were only 1,692 reported cases, a 99% decrease. The legal requirements for school children to receive the MMR vaccination continues to keep these numbers similarly low throughout the country.

However, on a number of occasions in the intervening years there have been significant outbreaks among highly vaccinated populations, typically school-aged populations. The most recent such outbreak was in portions of the Orthodox Jewish community

in the NY/NJ area. In general, the CDC estimates the immunity gained to mumps from the MMR vaccination is approximately 90% (with the rate for measles somewhat higher, approximately 95%, and 100% for rubella). Even with this vaccination failure rate of approximately 10% this should not in any way be taken (as some opponents of vaccination have attempted) to provide a reason not to vaccinate, as the infection rate in a non-vaccinated population would be approximately 30% when an outbreak of the disease takes place, compared with approximately 3% in a vaccinated population. Secondly and most significantly, even when there is an outbreak among a highly vaccinated population, the unvaccinated portion of the population plays a significant role in the start and spread of the outbreak. It is for this last reason that it is correct to say that the unvaccinated population is indeed causing a most unnecessary risk to the larger vaccinated population, as well as to the very small number of individuals who have specific medical reasons that militate against vaccination.

As mentioned, this recent outbreak in the Orthodox Jewish community is not the first one in recent years. Almost all of these outbreaks have taken place in school settings, places where large numbers of people tend to spend significant amounts of time together, giving ample opportunity for the spread of the disease. Of particular note was a case in 2006 among female university students in the Midwest. The CDC has suggested that the social habits of these students played a most significant role in that outbreak, as they tend to gather in close quarters for extended periods of time. A similar dynamic was found in the recent outbreak in the Orthodox community. The initial infection came from the UK, where vaccination rates have fallen most significantly in recent years. The initial transmission in America took place in a boys' summer camp, and was brought home by many of the campers, who went back to their yeshivas and spread the infection. Strikingly, this outbreak was overwhelmingly in the male population (as the camps and schools are single-sex institutions), with the only significant exceptions being siblings of the infected boys. It was also noted that very few non-Jews, including neighbors and the like, were infected. This has been ascribed to the quick randomness of brushes with those not in their immediate social circles (which consist of such brief en-

counters as passing by in a store or waiting on line in a bank), infection requiring extended exposure at close quarters as would be found in a family or camp/school (with dormitory living and *havrusa* learning being ideal ways for transmission).

Officials in the CDC made an additional suggestion as well, not exclusively based on vaccination failure. Typically, vaccinations work to eliminate diseases even when there is not a 100% vaccination rate, because a herd immunity is produced so that the occurrences of the disease are so few and far between and the immunity levels so high, that opportunities for its spread are quite limited. However, in this particular case some of the vaccination rates may have been significantly lower than the usual 95% and above, being in the 70-85% rate, and this may have allowed for the initial outbreak to spread far more widely. Subsequently this may have created a “toxic environment” whereby even people appropriately vaccinated with two doses and otherwise resistant to the mumps were infected, due to the overwhelming amount of the virus that was present in the environment.

Even one who dismisses this theory has no reason to refrain from vaccination, as a failure rate of approximately 10% with an infection rate of approximately 3% is far better and safer than an infection rate of 30% in the non-vaccinated population. Additionally, those whose vaccinations failed to provide them with immunity have done all that is prudent and appropriate, while those who refuse to vaccinate have acted with negligence and disregard for the well-being of others.

### **The Debate in the Lakewood Community, 2009–Present:**

As mentioned above, a number of community physicians as well as school nurses became concerned that a growing number of children in the Lakewood community were not being given the routine childhood vaccinations due to parental objections. Reaching out to the rabbinic leadership, a Beit Din was convened to address this matter. Sitting on the Beit Din were Rav Shmuel Fuerst (Chicago), Rav Yisroel Reisman (Lakewood) and Rav Aharon Sorscher (Lakewood); they issued a letter addressed to Rav Kanarek (of Lakewood)

strongly advocating universal vaccinations and encouraging schools to follow this policy.<sup>51</sup> As can be seen from the text of the letter, however, differing conclusions could be drawn from their words regarding public policy.<sup>52</sup>

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<sup>51</sup> The following is the full text of the letter (with original Hebrew maintained):

“בנוגע to your שאלה concerning whether to accept into your school children who are not immunized: After thoroughly researching the issue and hearing from both sides, including medical professionals, the opinion of the בית דין is as follows:

1. It is our opinion that every parent is obligated על פי דין to immunize his children in order to prevent serious illnesses הם ושלום, both to the child himself as well as a protection to the צבור.
2. Schools should enforce this policy as required by law and should insist on immunization records.
3. If an individual, based on his doctor and/or Rov’s advice, should choose not to immunize his child, the school may accept the child without requiring his immunization. It is in fact recommended that they do so.
4. In a case where the school feels that it will be negatively affected by such a policy (i.e. threats of a lawsuit, fines, parental pressure or negative publicity that could harm the school), the school has the right not to accept the child. שאלות in this area should be referred to the בית דין.

All of the above must be done in conformity with the דינא דמלכותא.”

<sup>52</sup> While the text of their ruling does lend itself to different conclusions, when placed in its proper context much of this confusion ceases to exist. The question at hand was never intended for the entire community, but only for the one yeshiva that had inquired. The school that asked did not have an existing policy, and in fact there were also several faculty members who were not vaccinated, and the school was not considering any change in its policy regarding them. In the case at hand there was only one family insisting on this exemption, and 95% or more of the student body had been appropriately vaccinated, thus creating the much desired “herd immunity.” Given all of these circumstances the Beit Din did not feel any compelling reason to exclude the children from this one family. Thus, the third paragraph of their ruling has little if any application to the larger public.

In their oral communication with the yeshiva that accompanied the written ruling, the Beit Din made it clear that they had no objections to the school making a rule excluding unvaccinated children, but that was not

In the summer of 2009 another letter was issued in the Lakewood community, this one titled “A Statement on Immunizations.” Issued by a number of leading rabbis, doctors, school principals and community leaders, this letter also strongly encouraged vaccinations for all children and urged schools to exclude unvaccinated children,<sup>53</sup> thus removing any ambiguity that might have remained fol-

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the question at hand. The fourth paragraph of their ruling does provide numerous justifications for the implementation of such a policy.

<sup>53</sup> The following is the complete text of the statement:

“We the undersigned physicians, rabbonim, school principals, and community leaders hold firmly that all medically eligible children and adults should receive immunizations against dangerous and life-threatening diseases in accordance with the universal recommendations of medical authorities in the United States and worldwide.

It is a medical fact that the national universal immunization program in the U.S. has drastically reduced the hundreds of thousands of cases of dangerous and life-threatening diseases that occurred every year prior to the institution of the program, including diphtheria, whooping cough, tetanus, polio, measles, hepatitis, congenital rubella, chicken pox, pneumonia and meningitis. At the same time, immunizations have been under constant surveillance and study to ensure their safety by governmental agencies and private concerns throughout the U.S. and the world.

Immunizations are effective due to two mechanisms. First, immunizations directly help to protect an individual against diseases. Second, immunizations indirectly protect an individual by reducing the number of people who “carry” disease-causing organisms, thus reducing an individual’s exposure to such organisms within the community.

Children who are not immunized are potential carriers of the very organisms that they were not immunized against—they are potential *rodefim* because they may expose others to grave risk, especially under-immunized children, immunocompromised people (i.e. children or adults who have chronic conditions or are undergoing chemotherapy), and the elderly. It is irresponsible to withhold immunizations from one’s child and thus place one’s child as well as others at risk of contracting dangerous and life-threatening diseases.

While we recognize that no medical treatment or procedure is completely without risk, the risks of not immunizing one’s child far outweigh the risks of immunizing. It is our position that sharing these risks equally to protect the *klal* is a communal responsibility. It is selfish to expect others to bear any risk of immunizing, no matter how minor, while taking ad-

lowing the letter issued by Rav Fuerst's Beit Din. Signers of this letter included Rav Yisroel Belsky, Rav Shmuel Fuerst, Rav Shlomo Gissinger, Rav Moshe Rabbinowitz, Rav Simcha Bunim Cohen, Rav Yaakov Forsheimer, and Rav Gavriel Finkel. This letter gave clear and strong direction both to parents and to community institutions in terms of establishing a coherent and consistent public policy.

Following the summer of 2009, Rav Shmuel Meir Katz, a prominent Dayan in Lakewood, issued a letter addressed to the school principals of Lakewood, NJ (dated 26<sup>th</sup> of Tishrei 5770).<sup>54</sup> In this

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vantage of the community-wide immunization that protects one's own unimmunized child.

For these reasons, we believe that all parents have the responsibility to immunize their children and themselves, and that it is incumbent on the leadership of the *klal* to ensure that all children are immunized and that vulnerable individuals are protected against potential carriers of disease. While parents may be entitled to withhold vaccinations from their own children, the community has a right and obligation to protect itself from potential danger.

In such, we believe that school administrators, daycare providers and others caring for children have the right and moral responsibility to screen children for immunization status and exclude medically eligible, unimmunized children from schools, daycare groups, or any other public venue in which such potential carriers may expose vulnerable individuals.

Finally, we believe that, until daycare immunization screening is instituted, parents who do not immunize their children have the moral responsibility to communicate this fact to their children's daycare providers so that other parents can make informed decisions to shield their children from risk."

<sup>54</sup> "There has been a lot of confusion lately regarding the Daas Torah of our Gedolim concerning proper school vaccination policy. I hope that the present letter will clarify the matter."

- Ha-Gaon ha-Rav Shmuel Kamenetzky, *Shlita*, is of the opinion that "Every individual retains the halachic right to choose whether to vaccinate or not vaccinate his children, in accordance with his concerns. Schools should accept these children without discrimination."
- Ha-Gaon ha-Rav Shlomo Miller, *Shlita*, ruled that "Forcing someone to vaccinate his children against his will when the school is not compelled to do so by law, is against Daas Torah."
- In the summer of תשס"ט, a Beis Din headed by ha-Gaon ha-Rav Shmuel Fuerst, *Shlita* (a close *talmid* of Moreinu ha-Gaon ha-Rav



letter a strong stand is taken in favor of parental autonomy for those who do not wish to vaccinate their children, and of welcoming these children in the local yeshivot. The crux of his letter is the statements from Rav Shmuel Kamenetzky, Rav Shlomo Miller and Rav Shmuel Fuerst. The letter is signed by Rav Katz and also bears a handwritten endorsement from Rav Kamenetzky, who briefly stated in Hebrew his support for the content of the letter.

However, the opinions as quoted in Rav Katz's letter require further clarification. Rav Shmuel Fuerst has stated that Rav Katz's letter does not accurately express his opinion.<sup>55</sup> Rav Fuerst is most insistent that all children need be vaccinated, and has said that schools are obligated to exclude unvaccinated youngsters.

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Moshe Feinstein, zt"l), convened here in Lakewood to rule on the question of school vaccination. After reviewing all of the material provided by both sides, including copious literature provided by local frum pediatricians, and after doing their own research as well, the Beis Din ruled that, should an individual choose not to immunize his child, it is recommended that the school accept the child without requiring immunization.

I would also like to make you aware that New Jersey Administration Code regarding school immunization (citation 8:57-4.4) affirms that religious schools shall have the authority to formulate their immunization policy "without challenge from any secular health authority."

"It is my hope that the Daas Torah of our Gedolim will be respected, and that the harassment that individuals have been subjected to by some school nurses will come to an end."

<sup>55</sup> This is seen in the 2009 "A Statement on Immunizations" which Rav Fuerst signed, as well as his oral communication (August 2011) with this author. He feels that this problem could have been avoided if Rav Katz had consulted with him to clarify his opinion.

At the same time, it should be stated in defense of Rav Katz that the letter initially sent by Rav Fuerst (together with Rav Reisman and Rav Sorscher) did leave room (in paragraph #2) to say that parental autonomy should be maintained. Although it also (in paragraph #4) made clear that there are numerous reasons and cases when this autonomy need not be allowed.

A more careful reading of that second paragraph may indicate that in fact it is not focusing on autonomy, as it speaks of a parent who refrains based on medical or rabbinic advice. It is possible that a more clearly written letter could have avoided this issue.

Dr. Nachum Indich, a physician in Lakewood, has reported<sup>56</sup> that subsequent to the issuing of this letter by Rav Katz, he and a number of other physicians met with Rav Miller. The result of these meetings was that Rav Miller reversed his ruling and indeed supports the need for compulsory vaccination of schoolchildren.

Of the three leading Rabbanim quoted by Rav Katz, only Rav Kamenetzky continues to maintain the position quoted in Rav Katz's letter.

Subsequent to this clarification by Rav Miller, Rav Katz, together with Rav Kamenetzky and Rav Malkiel Kotler, issued a directive to yeshiva administrators again insisting that unvaccinated children not be excluded from school.<sup>57</sup>

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<sup>56</sup> In conversation with this author, August 2011.

<sup>57</sup> The following is the complete text of the letter, hand signed by each of the three Rabbanim noted above, dated י"ג כסלו תש"ע (with Hebrew written as in the original):

**לכבוד המנהלים החשובים**

של החדרים ובתי יעקב שבעיר התורה דליקוואוד יצ"ו

In light of the recent mumps outbreak in our community, and in light of the insistence of some school pediatricians that, until the end of the outbreak, children who have not received the MMR vaccine should not be accepted into school, we would like to state the following:

- As שומרי תורה ומצוות *Menabalim* must understand that taking position on a medical situation, denying a child acceptance to school, or forcing someone to vaccinate his children against his will are all decisions involving serious Halachic שאלות.
- Vaccination practices involve risks recognized by the medical establishment. Consequently, each individual has the right to his opinion and choice in the matter, and no one has the power to force someone to vaccinate his children against his will.
- After considering the nature of the current outbreak, the very high percentage of fully vaccinated individuals among the mumps cases, the serious risks associated with the MMR vaccine, and the halachic gravity of denying a child acceptance to school even for one day, it is our opinion that, unless truly obligated to do so law, no school has the right to deny a child acceptance to school on the grounds that he or she has not received the MMR vaccine. It is incumbent upon the *Menabalim* to insure that school nurses act in this regard in accordance with הלכה, and not based on secular medical advice alone.

Both from the writings and from oral communication<sup>58</sup> with Rav Katz it is clear that the potential risk factor in vaccinations played a major role in formulating his opinion. Since these risks are statistically negligible and are of no real concern to medical authorities, most *poskim* could not accept this approach.

### Religious Exemptions:

In numerous states parents wishing not to vaccinate their children are permitted to sign a document stating that their religious convictions do not allow them to; based on this signature the child will then be permitted to attend school under the law. It is reported that small numbers of parents in Jewish schools have signed such documents. For a parent of a yeshiva student to sign such a statement in the name of Judaism is not just inappropriate, it is false. Whether a *posek* will rule that childhood immunizations are obligatory in halakhah or are discretionary (but highly advisable), there is no position in halakhah that says there is any prohibition or compelling reason to refrain from such vaccinations.

The New York State Department of Health allows exemptions for parents professing “genuine and sincere religious beliefs” that are contrary to immunization. As stated above, there is no validity to any suggestion that vaccinations are contrary to Jewish beliefs or practices. As such, to sign an affidavit in the name of Torah observance is simply false and should have no place in a yeshiva.

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May the זכות of conducting ourselves according to דעת תורה be a true protection for our children and bring lasting health to all the members of our community.”

<sup>58</sup> In conversation with this author, September 2011. This is further seen in a handwritten letter sent by Rav Katz to Dr. Schwartz (of Lakewood), dated two days after the immediately preceding document, where he writes, “The immunization debate is just that—a very debatable subject, with knowledgeable people on both sides.”

This statement might have had more of a place in the past, but since the formal disavowal of the Wakefield report, it is correct to say that all leading medical authorities in this country strongly endorse childhood vaccinations as a matter of public policy, with the only exceptions being for those whose personal medical condition indicates otherwise (such as a child receiving chemotherapy).

The State of New Jersey also provides for religious exemptions from mandatory immunization. N.J.S.A. 26:1A-9.1 states, "...When a parent or guardian submits their written religious exemption to immunization, which contains some religious reference, those persons charged with implementing administrative rules at N.J.A.C. 8:57-4.4, should not question whether the parent's professed religious statement or stated belief is reasonable, acceptable, sincere and bone fide. In practice, if the written statement contains the word 'religion' or 'religious' or some reference thereto, then the statement should be accepted and the religious exemption of mandatory immunizations(s) granted."

As is clear from the words of this code, the exemption is available for any and all professing a religious belief that vaccination is inappropriate, and such beliefs may not be questioned by any secular authorities. This language is most appropriate for the state, which neither has the interest nor the right to define religious doctrine; were it to do so it would likely soon find itself embroiled in legal action. However, this is not at all relevant to a yeshiva, which by definition sets the religious standards that are to be followed under its roof in all matters, both large and small. Even though the code itself does state that this exemption is to be given without questions being asked, there is no legitimate way that an Orthodox parent of an otherwise healthy child can claim that their religion prohibits or discourages vaccinations.

On the other hand, some states allow exemptions based on "personal beliefs" (not specifically religious beliefs). While there is nothing dishonest about a yeshiva parent having such a personal belief, it is a misguided one that should be corrected. ❧