

## Introduction

1. Professionalism Topics covered in this presentation  
2.4 Recognizing and being sensitive to clients' circumstances, special needs, and intellectual capacity (e.g., multi-cultural, language, gender, socioeconomic status, demeanour)

2. Infectious Diseases Society of America, *Always-deadly measles complication more common than believed* 10/28/16  
Subacute sclerosing panencephalitis (SSPE) is a neurological disorder that is 100 percent fatal. Infants younger than 12 months, who are too young to receive measles, mumps and rubella (MMR) vaccine, can get infected with measles and later develop SSPE, which may lay dormant for years. While it was once thought the risk of post-measles SSPE was one in 100,000, recent research identified a rate as low as 1 in 1,700 in Germany among children infected with measles before they were 5 years old, and the new study found it is about one in 600 for those who get measles as infants before being vaccinated. There is no cure for SSPE and the only way to prevent it is to vaccinate everyone against measles.

3. Letter by Rabbi Shmuel Meir Katz, Rabbi Shmuel Kamenetsky and Rabbi Malkiel Kotler, 13 Kislev 5770  
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 [by] 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 *Menaholim* to insure that school nurses act in this regard in accordance with הלכה, and not based on secular medical advice alone.

## 4. Vignettes

- 1> Susan, age 7, is a patient in the practice of Dr. Christine McConnell. Her parents, who profess Orthodox Judaism, skip her recommended second dose of the MMR immunization, due to their belief that the immunization is dangerous. Dr. McConnell considers such patients a threat to other patients, and wishes to find a way to remove Susan from her practice. Susan's family hires a lawyer to protect Susan. What should Susan's family's lawyer understand about the family's Jewish motivations?
- 2> Torah Academy of Simcoe, a private school operating in Ontario, declines to accept Susan as a student due to her vaccination status. Susan's family sues. What should Torah Academy's lawyer understand about the school's Jewish motivations?
- 3> Susan's father, David, is an automobile mechanic at a Honda dealership. He does not wish to have a COVID vaccine, arguing that his religion opposes the vaccine. Other mechanics at the dealership complain to the management, and David's superior strongly suggests that he could lose his job. What should David's lawyer know, regarding whether Judaism would support his claims about the vaccine?

## Background in Jewish Law

5. Vaccination in Halachah (2016) <https://www.yutorah.org/lectures/lecture.cfm/865788/>

6. Rabbi Yosef Karo (16<sup>th</sup> century Turkey, Israel), Code of Jewish Law Choshen Mishpat 427:8

וכן כל מכשול שיש בו סכנת נפשות, מצות עשה להסירו ולהשמר ממנו ולהזהר בדבר יפה, שנאמר: השמר לך ושמור נפשך (דברים ד, ט). ואם לא הסיר והניח המכשולות המביאים לידי סכנה ביטל מצות עשה ועבר בלא תשים דמים (דברים ד, ט).

And so any obstacle which could endanger life, there is a commandment to remove it and to be careful of it and be very cautious of it, as Devarim 4:9 says, "Be on guard, and guard your life." And if one does not remove it and one leaves the dangerous obstacles, he cancels a commandment and violates "Do not place blood."

7. Rambam (12<sup>th</sup> century Egypt), Mishneh Torah, Hilchot Rotzeiach uShemirat haNefesh 11:4

וכן כל מכשול שיש בו סכנת נפשות מצות עשה להסירו ולהשמר ממנו ולהזהר בדבר יפה יפה שנ' (דברים ד' ט') השמר לך ושמור נפשך, ואם לא הסיר, והניח המכשולות המביאים לידי סכנה, ביטל מצות עשה ועבר על "לא תשים דמים".

So, too, there is a commandment to remove any stumbling block which endangers lives, and to guard from it, and to be very careful with this, as Devarim 4:9 says, "Guard yourself, and guard your life." And if one does not remove it, and one leaves dangerous stumbling blocks, he fails to fulfill a commandment, and he violates "Do not place blood."

8. Rabbi Moshe Feinstein (1973), Igrot Moshe Even haEzer 4:10

כיון שעתה נעשה זה באופן קל לבדוק יש לדון שאם אינו בודק את עצמו הוא כסגירת העינים לראות מה שאפשר לראות, ומכיון שאם ח"ו אירע דבר כזה הוא להורי הילד צער גדול מאד מן הראוי למי שצריך לישא אשה לבדוק את עצמו.

Since it is easy to check, one should realize that failure to check one's self would be like closing one's eyes before that which one could see. G-d forbid, such an event would cause the child's parents extraordinary pain, and so it would be appropriate for a man who wished to wed a woman to test himself.

9. Rambam (12<sup>th</sup> century Egypt), Mishneh Torah, Hilchot Rotzeiach uShemirat haNefesh 11:5

הרבה דברים אסרו חכמים מפני שיש בהם סכנת נפשות וכל העובר עליהן ואמר הריני מסכן בעצמי ומה לאחרים עלי בכך או איני מקפיד על כך מכין אותו מכת מרדות.

The sages prohibited many activities because they endanger lives. Regarding anyone who transgresses, and who says, "I will endanger myself, and what business is it of others?" or "I don't care", we issue lashes of rebellion for him.

10. Talmud, Bava Metzia 112a

"ואליו הוא נשא את נפשו" - מפני מה עלה זה בכבש ונתלה באילן ומסר את עצמו למיתה - לא על שכרו?

"For this he puts his life on the line (Devarim 24:15)" – Why did this person climb the ramp, become suspended from the tree, and give his life over to death? Was it not for his wages?

11. Talmud, Yevamot 72a

א"ר פפא הלכך יומא דעיבא ויומא דשומר פתאים ד'.

Rav Pappa said: Therefore, we neither circumcise nor let blood on a cloudy day, or a day when the south wind blows. But now, when the masses trample this, we invoke Tehillim 116:6, "G-d guards the fools."

12. Rabbi Chaim Ozer (Early 20<sup>th</sup> century Poland), Achiezer 1:23

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

One must conclude that [conception] is very unlikely to be a concern, a rare minority of cases, and the sages weren't concerned for this. For this, one may rely upon "Guards the fools."

13. Rabbi Moshe Feinstein (1981), Igrot Moshe Choshen Mishpat 2:76

על כל הדברים האלו שפרט אותם לא שייך לאוסרן ממש מאחר דהרוב מהן עניני הנאה הן ולרובא דרובא דאינשי לא מזיק להו כלום ואיכא הרבה מהן שא"א להזהר בהו להרבה אינשי שטרידי בפרנסתן... שלכן לא שייך לאסור אלא רק לעורר להעלמא במה שידעו איזה דבר הוא טוב ואיזה דבר הוא רע וליעץ להם...

Regarding all of these practices which [Rambam] specified, it is not relevant to actually prohibit them, since most of them are pleasures which do not harm the great majority of people, and many of these practices are unavoidable for people who are busy with their work... So it is not relevant to prohibit them, but only to alert people so that they will know what is good and what is bad, and to counsel them...

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

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

15. Rabbi Yaakov Ettlinger (19<sup>th</sup> century Germany), Binyan Tzion 137

אף על גב דכלל בידינו דאין לך דבר עומד בפני פקוח נפש ואין הולכין בפ"נ אחר הרוב זה דוקא ביש ודאי סכנת נפש לפנינו כגון בנפל עליו הגל דאז חוששין אפילו למיעוטא דמיעוטא אבל בשעתה אין כאן פקוח נפש רק שיש לחוש לסכנה הבאה בזה אזלינן בתר רובא כמו לענין איסורא דאל"כ איך מותר לירד לים ולצאת למדבר שהם מהדברים שצריכין להודות על שנצולו

Even though we have a principle that nothing stands before guarding a life, and we do not follow the majority in matters of guarding a life, that is only where there is a definite threat to life before us. For example, this is where someone is beneath a ruin, and we are concerned for even a tiny minority [possibility that he yet lives]. But where there is no need to guard a life right now, but only to be concerned for a future danger, we follow the majority as we do regarding prohibitions. Otherwise, how could one enter the sea, or go into the wilderness, activities for which we thank Gd when we are saved!

16. Rabbi Aryeh Lipschitz (19<sup>th</sup> century Vilna), *Shem Aryeh* 27

לפרוש לים הגדול לשוט, היינו כדי לשוטט בעולם ולראות דברים חדשים... מהראוי להרחיק מזה, רק לצורך מזונות או לסחורה...

To go to sea in the Mediterranean, meaning to wander the world and see new things... It would be appropriate to avoid this, but only to go for livelihood or trade...

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

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

18. Rambam (12<sup>th</sup> century Egypt), *Mishneh Torah*, *Hilchot Shabbat* 19:13

ויוצא בקליפת השום ובקליפת הבצל שעל המכה ובאגד שעל גבי המכה... ובביצת החרגול ובשן השועל ובמסמר הצלוב, ובכל דבר שתולין אותו משום רפואה והוא שיאמרו הרופאים שהוא מועיל

One may travel with garlic skin or onion skin on a wound or in a bandage on a wound... and with a locust egg or fox tooth or a *tzaluv* person's nail, or anything hanging on him for medicine, if doctors say it helps.

19. Rabbi Avraham Gombiner (17<sup>th</sup> century Poland), *Magen Avraham* 328:1

ועבי"ד ססי' קנ"ה דבעינן שתהא הרפוא' ידועה או ע"פ מומחה

See *Yoreh Deah* 155; we require a known medicine, or a medicine recommended by an expert.

20. Rabbi Moshe Sofer (18<sup>th</sup>-19<sup>th</sup> century Pressburg), *Chatam Sofer Yoreh Deah* 45

והנסיון הוא עד נאמן יותר מכל הסברות הבנויות על ראיות

Experience is a more honest witness than all of the theories founded upon proofs.

21. *Wilson v. Swanson*, 1956 CanLII 1 (SCC), [1956] SCR 804

<https://www.canlii.org/en/ca/scc/doc/1956/1956canlii61/1956canlii61.html>

*Per* Abbott J.: The medical man must possess and use that reasonable degree of learning and skill ordinarily possessed by practitioners in similar communities in similar cases, and it is the duty of a specialist such as the defendant, who holds himself out as possessing special skill and knowledge, to have and exercise the degree of skill of an average specialist in his field.

22. *Ter Neuzen v. Korn*, 1995 CanLII 72 (SCC), [1995] 3 SCR 674

<https://www.canlii.org/en/ca/scc/doc/1995/1995canlii72/1995canlii72.html>

In the case of a specialist, such as a gynaecologist and obstetrician, the doctor's behaviour must be assessed in light of the conduct of other ordinary specialists, who possess a reasonable level of knowledge, competence and skill expected of professionals in Canada, in that field. The conduct of physicians must be judged in the light of the knowledge that ought to have been reasonably possessed at the time of the alleged act of negligence.

23. Rabbi Yaakov Emden (18<sup>th</sup> century Germany), Mor uKetziah Orach Chaim 328 **וכן אם רופא אמר**

אף הסתמית ע"י רופא מומחה, כודאית השיבא

Even an unknown treatment is considered certain, if authorized by an expert physician.

24. Rabbi Yechiel Michel Epstein (19<sup>th</sup>-20<sup>th</sup> century Poland), Aruch haShulchan Yoreh Deah 336:2

...אסור להתעסק ברפואות אא"כ הוא בקי ויש לו רשות מב"ד. והאידנא צריך להיות מוסמך מהממשלה שיש לו רשות ליתן רפואות לחולאים...

One may not involve himself in medicine unless he is expert and he has license from a rabbinical court. And now he must be ordained by the government, having permission to provide treatment to the ill...

25. Citations from Rabbi Menachem Mendel Schneerson (20<sup>th</sup> century USA)

[https://www.chabad.org/library/article\\_cdo/aid/2870103/jewish/What-Does-Jewish-Law-Say-About-Vaccination.htm](https://www.chabad.org/library/article_cdo/aid/2870103/jewish/What-Does-Jewish-Law-Say-About-Vaccination.htm)

When the polio vaccine was being implemented in Israel, there were those who turned to the Lubavitcher Rebbe, Rabbi Menachem M. Schneerson, of righteous memory, for his opinion. The following is a sampling of his replies.

In the winter of 1957 the Rebbe wrote a reply, pointing out that he was hurrying to do so because of the prime importance of the issue at hand:

*Regarding your question about inoculations against disease:*

*I am surprised by your question, since so many individuals from the Land of Israel have asked me about this and I have answered them in the affirmative, since the overwhelming majority of individuals do so here [in the United States] successfully. Understandably, if there are inoculations that are produced by multiple pharmaceutical companies, you should use the ones whose product has been safely tried and proven. (Rabbi Menachem M. Schneerson, Igrot Kodesh, vol. 14, p. 357.)*

In the spring of 1956 the Rebbe wrote:

*In reply to your letter in which you ask my opinion about the injections that are commonly given to young children: It is with regard to matters such as these that the axiom "Do not set yourself apart from the community" applies. You should act according to that which is done by [the parents of] the majority of children who are in your children's classes... (Ibid., vol. 11, p. 137)*

Even as the polio vaccine effectively eliminated the dreaded disease, there were instances where faulty shots actually brought about illness. In a letter from the winter of 1957, the Rebbe addressed this issue:

*The event that occurred in the United States was at the beginning of the use of these vaccines, before the [exact] medical compound was definitively established. This is not the case at present, after months of experience with the vaccine. Therefore, once a vaccine's reliability is firmly established, there is no worry. To the contrary... (Ibid., vol. 14, p. 343)*

26. Ramban (13<sup>th</sup> century Spain), Torat ha'Adam, Inyan haSakkanah 6

הרופא כדיין מצווה לדון, ואם טעה בלא הודע אין עליו עונש כלל, כדאמרינן (סנהדרין ו:)... אין לדיין אלא מה שעיניו רואות, ואעפ"כ אם טעה ונודע לב"ד שטעה משלם מביתו על הדרכים הידועים בו...

A doctor is like a judge, who is commanded to judge. If he errs due to lack of knowledge, he has no punishment, as Sanhedrin 6b says, "... A judge only has that which his eyes see." And yet, where he errs and it becomes known to the court, he must pay, in the known manner...

27. DiPoce and Buchbinder, *Preventive Medicine*, Journal of Halachah and Contemporary Society 42 (2001), pg. 98 Rav Hershel Schachter explains that when one's risk of developing disease is a *miut hamatzui* [small, yet recognizable] one would be obligated to undergo the appropriate testing for the disease. Rav Schachter suggests that a *miut hamatzui* would be in the range of 10%... Thus, if a person's risk were in the range of 10%, he would be obligated to be vaccinated. [Footnote: He asserted that if the adverse reaction risk for a given vaccine was in the range of 1 in 1,000,000, the concept of *batla daito eitzel kol adam* would be applied to mitigate an individual's fear which might have prevented him from being vaccinated.]

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

Childhood vaccinations are not accompanied by any significant danger. Despite widespread belief to the contrary, autism is not at all associated with M.M.R. inoculation. That misinformation gained currency and became widespread

because of a spurious article based upon fraudulent research that appeared in a British medical journal. The principal author's malfeasance was subsequently exposed and his license to practice medicine was revoked. Possible connections between autism and M.M.R vaccine were rigorously investigated and in 2004, in a publication entitled "Immunization Safety Review: Vaccines and Autism," the Institute of Medicine reported that epidemiological evidence failed to establish a causal relationship. Other dangers attendant upon various forms of inoculation are infinitesimal. The dangers that do exist are well within the parameters of *shomer peta'im* as defined by *Binyan Zion*. For *Shem Aryeh* and *Imrei Shefer* they are far below the threshold level requiring even invocation of *shomer peta'im*.

Even assuming a higher degree of danger, as earlier argued, a parent is nevertheless charged with assumption of a minimal danger on behalf of a child in order to ward off more serious danger, as evidenced by a father's obligation to teach his sons to swim.

29. Rabbi Yosef Shalom Elyashiv (20<sup>th</sup> century Israel), cited in Rabbi Dr. Akiva Tatz, *Dangerous Diseases and Dangerous Therapy in Jewish Medical Ethics*, pg. 48

In fact, Rabbi Elyashiv went so far as to assert that failure to immunize would amount to negligence. Refusing childhood immunizations on the basis of unsubstantiated fears of vaccine side-effects is irresponsible and out of order halachically.

#### Vignette 1: Dismissing a patient

30. 2015 Facebook post by a California physician, during a measles outbreak

In my practice you will vaccinate and you will vaccinate on time. You will not get your own "spaced-out" schedule that increases your child's risk of illness or adverse event. I will not have measles-shedding children sitting in my waiting room. I will answer all your questions about vaccine and present you with facts, but if you will not vaccinate then you will leave my practice. I will file a CPS report (not that they will do anything) for medical neglect, too.

I have patients who are premature infants with weak lungs and hearts. I have kids with complex congenital heart disease. I have kids who are on chemotherapy for acute lymphoblastic leukemia who cannot get all of their vaccines. In short, I have patients who have true special needs and true health issues who could suffer severe injury or death because of your magical belief that your kid is somehow more special than other children and that what's good for other children is not good for yours.

This pediatrician is not putting up with it. Never have, never will.

31. CPSO, Ending the Physician-Patient Relationship

<https://www.cpso.on.ca/Physicians/Policies-Guidance/Policies/Ending-the-Physician-Patient-Relationship>

Physicians must respect patient autonomy with respect to lifestyle, healthcare goals, and treatment decisions, and not end the physician-patient relationship solely because the patient:

- a. does not follow advice (for example, with respect to smoking cessation, drug or alcohol use, or the patient's decision to refrain from being vaccinated or vaccinating his/her children);

32. Rabbi Chaim Yosef Dovid Azulai (18<sup>th</sup> century Italy), *Birkei Yosef Orach Chaim* 301:6

ויהי היום ליל ש"ק אירע שנערה ישראלית שתתה סם המות והתחילו לה דבקי מיתה ובאו אצל האיש הלז בליל שבת וקם וכתב הקמיעא לנערה ותכף הקיאה ועמדה על בוריה. וביום השבת נודע בעיר כל אשר נעשה ולעזה עליו המדינה שחילל שבת בשאט נפש וכתב ונתן בידה. והוא השיב דפקוח נפש דוחה שבת. והיו מגמגין בדבר. אי לזאת שאל שאל האיש אם חטא בזה ואם תמצא לומר שחטא אי עבר אדאוריתא או אדרבנן.

One Friday night, a Jewish girl drank poison and signs of death began. They came to a certain man on Friday night, and he rose and wrote an amulet for the girl; she vomited, and returned to health. This event became known in the city on Shabbat, and people gossiped that he had violated Shabbat wantonly, writing and giving this to her. He replied that saving lives overrides Shabbat. They were uncertain, and so the man has inquired as to whether he had sinned, and if it was a sin then whether it was biblical or rabbinic.

33. Charging for healthcare (2015) <https://www.yutorah.org/lectures/lecture.cfm/835117/>

### Vignette 2: Rejection from school

34. Immunization of School Pupils Act, Ontario <https://www.ontario.ca/laws/statute/90i01>

Subsection (1) does not apply to a parent who has completed an immunization education session with a medical officer of health or with a medical officer of health's delegate that complies with the prescribed requirements, if any, and who has filed a statement of conscience or religious belief with the proper medical officer of health.

35. Rabbi Asher Bush, *Vaccination in Halakhah and in Practice in the Orthodox Jewish Community*, Hakirah 13 (2012)  
More recently 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.

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

A person is certainly under no obligation to allow others to pose harm to him or to his children. In days gone by, a teacher accepted students for tutelage exercising discretion in choosing his charges in the manner of any other artisan or professional. Alternatively, a group of parents cooperatively engaged a teacher to provide instruction for their children. Such arrangements were entirely at the discretion of the parents and the teachers. Presently for better or for worse, entire schools are established in much the same manner by a single educator or by a group of administrators... Communal institutions must be concerned with the educational welfare of all children in the community. Yet, even such institutions dare not sacrifice the many for the sake of the few. Quite to the contrary, their mandate is to maximize educational opportunities by safeguarding the health and welfare of all prospective students.

Policy decisions by community schools regarding admission of unvaccinated children should be made by judiciously weighing the risks and benefits involved. The danger of contagion may vary from time to time and from locale to locale...

### Vignette 3: Employer mandates

37. *Workplace Requirement for Vaccination*, Eretz Hemdah, Jan 2021

<http://www.erezhemdah.org/gna.asp?pageid=3&lang=en&cat=&str=vaccine>

[This question was sent by a European rabbi.] A business owner demands that his employees be vaccinated against Corona due to the type of work done and makes them sign a waiver of claims for damages stemming from the vaccine. Can an employer make such a demand and transfer risk to a reluctant employee?

*[The answer (written on Jan. 15, 2021) is a short, general, fundamental one and should not be seen as giving the whole picture regarding claims in a specific case. It also can be impacted significantly by local law and health policies, which may differ by location and by changes in the situation and scientists' knowledge on the subject. Our general instruction is for all to follow public health guidelines and consensus (see Shulchan Aruch, Orach Chayim 328:10). At this point (with 30 million given worldwide), vaccination appears safe and effective and enjoys medical consensus.]*

Regarding the morality of requiring a theoretically risky action, many jobs include risk, e.g., exposure to contagion, chemicals, extensive driving. It is legitimate for an employer to put his worker in necessary, responsibly assumed risk (Bava Metziah 112a). If, based on scientific consensus (which in many workplaces worldwide appears likely), the workplace will be safer overall if all members vaccinate, it is morally prudent to protect the staff as a whole. Should the other worker's be forced into working with people who are endangering them?! Would the unvaccinated worker agree to be sued if he causes death or serious harm to a co-worker whom he infected (some 5% of the vaccinated are presently expected to be vulnerable)?!

We now turn to the efficacy of the waiver...