

# Compulsory Testing and Therapy for AIDS

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AIDS raises a number of halachic issues in addition to a wide range of its medical and social problems. An essential element relevant to AIDS is the identification of high-risk groups for testing, which is simple and performed on a blood specimen. Even though there is as yet no cure for AIDS, the test is important for the person involved as well as for all contactants. There are two halachic issues:

- a. May a patient be treated against his will?
- b. May a person be forced to undergo treatment or testing in order to prevent others from becoming infected?

## Compulsory Treatment

In the opinion of Nachmanides,<sup>1</sup> as expressed in his commentary a man of piety ought not seek medical treatment:<sup>2</sup>

During the era of the prophets the pious sought counsel of the prophets rather than that of physicians, in contrast to the behavior of Asa, of whom it is said: “Even in his illness he did not seek the Lord, but the help of physicians”<sup>3</sup>... According to the Talmud *Baba Kama* 85a, the verse “he shall surely heal”<sup>4</sup> indicates that physicians are permitted to heal, but this does not mean that patients are justified to seek human treatment. However, if a patient **does** seek such treatment, as is common behavior, rather than rely entirely on celestial help as do those of unrestricted piety, the physician should not refrain from treating him. For as long as the physician is adequately trained, he may not avoid giving treatment lest this may

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1. Ramban

2. Leviticus 26:11

3. II Chron. 16:12

4. Exodus 21:19

lead to the death of the patient. Nor should the physician avoid giving treatment on the ground that the Lord alone heals all flesh. Accordingly, a person who injures another “by stone or fist” is obligated to pay for the medical costs and for the injury inflicted because the laws of the Torah do not regulate for possible miraculous intervention.

Contrary to Nachmanides’ view, *Rashba*<sup>5</sup> and the *Tur*<sup>6</sup> held that since “He shall surely heal”<sup>7</sup> clearly implies that the physician is permitted to heal..., this in turn indicates that one is also obligated to treat, as part of one’s duty to protect life.

The *Bayith Chadash*<sup>8</sup> added:

Does not the verse about Asa, which stated that “Even in his illness he did not seek the Lord, but sought help from physicians”<sup>9</sup> seemed to imply that it is prohibited to seek medical treatment for a blow inflicted by Heaven? But, since he (Asa) sought help **only** from physicians and **none** at all from the Lord, he was punished accordingly. However, if one puts one’s trusts in the Lord to heal by a physician as his emissary, it is only right to seek such human intervention, even for what was inflicted by Heaven. This is the accepted behavior in all Jewish communities.

The *Bayith Chadash* clearly calls upon the patient to seek God’s mercy together with the help of medical therapy, and just as he should trust in the Lord, so he also must seek human meditation.

We must also understand that Nachmanides somewhat revised his opinion as expressed in *Torath ha’Adam*, where he wrote:

Since the physician is permitted to heal, healing is indeed a divine commandment. The physician need have no fear of the possible consequences. Therefore, if he acts in accordance with his best judgment, healing is the very fulfillment of the divine commandment to heal.

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5. Resp. 1:413

6. Yoreh De’ah 336; see Beth Yosef

7. Exodus 21:19

8. *ibid*

9. II Chron. 16:12

The position of Nachmanides in *Torath ha'Adam* leads us to conclude that he holds that on the one hand the physician has a divine commandment to heal, but that the patient has a right to choose to rely entirely on heavenly cure.

If the patient chooses not to rely entirely on spiritual intervention, he is then obligated to seek human treatment.

The *Chazon Ish* wrote:<sup>10</sup>

I personally think that maintaining one's health in accord with the laws of nature is an obligatory commandment. It is one of the obligations which complete the person. There were Talmudic sages who went to gentile physicians and even to heretics for treatment... It is obligatory to seek medical treatment for one's self, just as one is obligated to seek medical treatment for one's fellow man. Try, therefore, to overcome your emotional inclinations and follow the physicians' instructions.

Leading contemporary authorities<sup>11</sup> hold that in our days (when there are no prophets) all authorities agree that medical intervention is obligatory.

According to *Radbaz*<sup>12</sup> a patient may be compelled to follow physician's instructions:

You inquired about a patient whose medical treatment required "violating" the Shabbat. A pious patient who tries to avoid "violating" the Shabbat (when this is medically necessary) is a pious fool and is punishable for so behaving. Such behavior is not piety, but is equivalent to self-destruction. The patient must therefore be treated even against his will, otherwise it is tantamount to shedding blood.

Relying on the opinion of *Radbaz, Magen Abraham*<sup>13</sup> comments on the decision of the *Shulchan Aruch* that even medical treatment of questionable benefit supersedes Shabbat regulations in lifesaving situations. If the patient did not want to accept treatment, this is to be enforced on him.

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10. *Letters* 1:136, 138

11. *Resp. Tsits Eliezer Ramath Rachel* 20; *Resp. Yechaveh Da'ath* 1:61

12. *Resp.* 4:1139

13. *Orach Hayim* 328:6

In conclusion, a patient may be compelled to accept medical treatment even against his will.

### **Compulsory Testing and Treatment of High-Risk Groups**

There are two basic questions:

1. Is it proper to require that every member of a “high-risk group” undergo screening for AIDS when only a minority of them are likely to be AIDS carriers?
2. Is it proper to require them to undergo blood testing, which is an invasive procedure, with some albeit minimal risk?

It seems to me that the answer to both these questions is in the affirmative. Such testing procedures should be made mandatory for the benefit both of the subjects and that of the public.

Similarly, compulsory blood tests are called for despite the possible complications associated with them. But first we must halachically define the concept of “high-risk group.”

We should apply the halachic principle of “epidemic” to the members of a high-risk group. For example, if a city is affected by an epidemic all its residents constitute a high-risk group likely to contract disease. Any portion of the population which is particularly susceptible, whether because of life style (homosexuality) or because of a medical condition (hemophilia), is to be considered like those in an area of epidemic.

In Responsa *Chatham Sofer*<sup>14</sup> fasting on Yom Kippur during a cholera epidemic was discussed. A nursing mother is permitted to take food if the baby’s life might be endangered by the mother’s fast leading to reduction of vital milk supply. So also is it permitted<sup>15</sup> for the mother to take food in cases where the threat to a baby’s life is questionable. “All the more is it permissible for a healthy person to take food if that person’s own life is in danger, even if he is for the moment still healthy, lest he fall victim to the epidemic.”

It is common knowledge that on Yom Kippur during an epidemic of cholera, Rabbi Yisrael Salanter made kiddush in the presence of the whole congregation.<sup>16</sup>

See *Magen Avraham* (576:2) who wrote: “Nowadays we do not fast at all during an epidemic, for our experience has been that fasting can be dangerous.”<sup>17</sup>

14. *Likkutim* 23

15. *Resp. Devar Shemuel* 107

16. see R. S. Y. Zevin, *Ha-Moadim be-Halacha*, p. 85

When the patient says on Yom Kippur: “I do not need to eat” and the physician says: “he should eat,” halacha requires that he be forcibly fed<sup>18</sup>. Since epidemics are to be equated with life threatening disease, it follows during an epidemic food must be taken. In light of this, epidemic and high-risk groups call for compulsory medical treatment.

### **Compulsory Testing and Treatment for the Benefit of the Public**

Until now our discussion has been based on halachic sources which would obligate a group with a high risk of contracting AIDS to be tested for their own benefit. Although the disease is as yet incurable, there is no doubt that timely intervention may lengthen the patient’s life. In fact, compulsory testing is proper not only for the sake of the members of the high-risk group, but is also because the high-risk group may be a danger to the public.

In the *Shulchan Aruch, Rama*<sup>19</sup> ruled that: “He who endangers the public, e.g. a forger, is considered a “*rodef*” (pursuer, a danger to the public) and it is therefore permissible to inform the gentile authorities of his deeds.” In paragraph 2 it is stated: “Therefore, a fetus which threatens its mother’s life may be aborted as it is in effect a “*rodef*.” It is clear that the law of “*rodef*” applies to anyone, even if as blameless as a fetus who endangers the life of another. In such situations it is permissible to destroy the “*rodef*” or inform the authorities against him.

It is known that high-risk groups endanger both their own members and the general population. Therefore, even if they are blameless they are to be considered “*rodefim*.” Similarly, the principle of “*rodef*” applies in cases of doubt such as, for example, the case of a robber who might be a threat to the life of his victim.<sup>20</sup>

Members of the high-risk group must be tested because they constitute possible “*rodefim*” to threaten the welfare of the public. Halacha requires minimizing the injuring to the “*rodef*” while saving the victim.

Taking a sample of blood is certainly only a minimal injury. In addition, we might well apply the principle established in the

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17. See *S’de Chemed, Yom ha-Kippurim* 3

17. *Shulchan Aruch* 618

18. *Choshen Mishpat* 425:1

19. see *Sefer Me’irat Einayim*, *ibid.* 6

*Shulchan Aruch*<sup>21</sup> that the City Elders have the power to seize private property and even condemn private property, as needed.

See *Sefer Me'irat Einayim*<sup>22</sup> according to whom the Elders “may fine violent persons, excommunicate them, and imprison them.” There is surely an urgent “need” to prevent the spread of AIDS, particularly when all we ask of the high-risk group is a simple blood test.

### Summary

Appropriate testing of high-risk groups is obligatory for three reasons:

1. Everyone is obligated to accept medical treatment if sick or in danger, and such treatment may be applied compulsorily.
2. A high-risk group is to be considered a “*rodef*,” as a danger pursuing the general population.
3. The City Elders may legislate regulations which physically affect the inhabitants of the city. This surely applies to regulatory blood testing for AIDS, particularly since such tests involve only minimal danger.\*

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20. *Choshen Mishpat* 2

21. *ibid.* 8

\*In his responsa *Radbaz* wrote: “Further, amputation of even a non-vital limb can cause fatal bleeding... I have seen a patient die from bleeding from small scratches on his ear. If scratches can be fatal, all the more is amputation dangerous (*Resp.* 1052; 3:527).”

It is, however, inconceivable that *Radbaz* was referring to a procedure similar to modern blood testing. See Dr. Levi, “*Kidney Transplantation in Halacha*” in *Noam* 17, where he wrote: “*Radbaz* was referring to the state of medieval medicine.” See *Tsits Eliezer* 9:48, 10:25. I have discussed this issue in detail in my article “Priorities in Lifesaving” in *Dine Yisrael* (5736).