Letters to the Editor

To the Editors,

The review of metzitzah b'peh and the risk of neonatal herpes ("Metzitzah b'Peh – Paradigm for Halachic Risk Taking" vol VI, no 1, Dec 2007) presented a highly conceptual, theoretical, and philosophical assessment of the issue. While there is certainly a value to this method of halachic analysis, there are a number of practical perspectives that should be addressed as well. Though it may be convenient to dismiss "isolated case reports" as anecdotal, and that they therefore "border on speculation", it should be recognized that a great many significant medical findings came from following up on anecdotal reports. The AIDS epidemic was first identified after isolated case reports of unusual outbreaks of Kaposi sarcoma. That smoking directly causes heart and lung disease was only conclusively proven many years after initial reports found an association. Unfortunately, this allowed cigarette manufacturers to hide behind the smokescreen of "no conclusive evidence" while continuing to peddle their wares unhampered, and to our shame, it kept Yeshivot from prohibiting rampant smoking that plagued batei midrashim until very recently.

In view of the reported possible association between metzitzah b'peh and the highly fatal or disabling neonatal herpes infection, it behooves us all to study the issue further, and get the facts. Instead, the authors present a speculative statistical analysis concluding that the risk is "indeed quite minimal". Without any stated evidence, they even hypothesize that the wine in the mohel's mouth and the "unidirectional contact" (presumably referring to the one way suction?) will further decrease transmission. They also report that the mortality rate "could potentially be reduced by early intervention with antiviral medication" , though hidden in a footnote citing the study, they acknowledge that "less than 30% of patients were developmentally normal and approximately 60% had moderate to severe disability", an outcome that should still fall under the rubric of pikuach nefesh. The situation calls for a practical not philosophical response; a large-scale study comparing the rates of neonatal herpes infections among those with direct metzitzah b'peh and those without. While some may feel that this is the job of the medical community, and that the halachic world does not have to respond until conclusive proof is brought, can we really so easily wash our hands of it in the setting of potential pikuach nefesh?

Among those who believe that traditional metzitzah b'peh is the only option, some have argued that the scientific community is biased against religion, and that as the Torah commanded this, a truly impartial study could not possibly find significant risk. While this Talmudic logic seemingly makes a study unnecessary, it could equally be twisted to argue that if significant risk is present, the Torah must not have required the direct form of metzitza b'peh. In any case, this whole point could be obviated in a practical way; allowing only those recently tested negative for herpes to perform traditional metzitzah b'peh. An analysis balancing the halachic concerns for protecting the livelihood of infected mohels, against the pikuach nefesh risk they may pose, would have been valuable in this regard.

Larry Eisenberg MD

To the editor,

We thank Dr. Eisenberg for his comments that we read with great interest. We are somewhat saddened however, by their negative and often somewhat derisive tone. Moreover, while we acknowledge his suggestions for future studies, we believe that the article successfully accomplished that which it initially set out to do. We chose to analyze halachic risk taking, its nature and scope, and test any possible theories using *metzitzah b'peh* as a current method of tweezing out the various issues.

Dr. Eisenberg challenges several aspects of our article: 1. Halachic methodology; 2. Scientific methodology; 3. Interpretation of data and suggestions for future research. We will respond to each in turn.

1. Today, there is little value is memorizing the text of *Shulchan Aruch* as a guide for halachic living, as Modern man will not find within this great tome answers to today's many technical question. Viewing Halacha as a mere practical system of law reflects a faulty understanding of the halachic process. Rather, the core basis of the Halacha must first be analyzed and understood – its depths plumbed, its nature verified, and its scope stretched to the farthest possible limits so as to form a basis for positing and understanding its practical guidelines. Only by doing so, by testing various halachic hypothesis in such a way, can we even attempt to answer the many modern questions that have arisen and have yet to arise in our lifetime. Therefore, we believe that presenting "a highly conceptual, theoretical, and philosophical assessment of" risk taking in Halacha is far from lamentable, but is rather of utmost importance if we are even to begin to analyze how the possible risks of *metzitzah b'peh* fit in to the larger halachic framework. We trust that Dr. Eisenberg fundamentally agrees with our approach.

As a further methodological point, we doubt that "protecting the livelihood of infected mohels" weighs heavily in a halachic analysis of the issues of risk taking in Halacha and therefore did not include such a discussion it in this analysis.

Lastly, we question the notion suggested by Dr. Eisenberg, that "Among those who believe that traditional *metzitzah b'peh* is the only option, some have argued that the scientific community is biased against religion, and that as the Torah commanded this, a truly impartial study could not possibly find significant risk." We are somewhat troubled how this relates to our article. We attempted to provide **both** a thorough halachic as well as scientific analysis in our article as we believe that **both** are reflections of that which is true. This article represents an effort to **synthesize** the two worlds; harmonizing between that which we learn in the Beit Midrash and that which we learn at the hospital bedside and laboratory. Attempting to undermine the basis for our analysis on these grounds is rather perplexing.

2. The "scientific" evidence for an association between neonatal herpes and *metzitzah b'peh* is highly tenuous at best, as we stated in our paper. We indeed did "dismiss 'isolated case reports' as anecdotal," as even a cursory reading of the current scientific paper in the literature reveals them to be. Case reports admittedly have their pros and cons. Where anecdotes shed their subjectivity and bias and confounders become credible or even objective and reproducible is difficult to determine. It is our humble opinion that anyone reading the three particular referenced cases with a critical eye will find them wanting in terms of objectivity and methodology. While these reports make claims regarding *metzitzah b'peh* for the general community, none define how the subjects of these reports were accumulated nor how representative they are of any community at all. There is also no discussion of the study sample or method of sampling in any of them. Lastly, the simple factual inaccuracies present in some of them to even a casual non-medically trained reader raise significant questions and doubts as to the veracity and accuracy of the papers in their entirety. For example, historical proof for rabbis rallying **against** *metzitzah b'peh* is brought by a photograph of a broadside in Jerusalem of 5661 signed by numerous rabbis in this vein (as quoted by the *Sedei Chemed*) [see *HaRefuah* 2:144 (2005): 129]. A careful reader will note that the sign in fact states quite the **opposite** of these authors intention – namely that it is forbidden to abandon the practice of *metzitzah b'peh*, and a more learned reader will recall that the *Sedei Chemed* himself fought adamantly to defend this age-old tradition.

We share Dr. Eisenberg's sentiment regarding smoking. There are instances in which policy shouldn't have to wait for a peer reviewed published double blind randomized placebo control trial with a p-value less than 0.05. Where and when this should happen is difficult to pinpoint. However, in the face of overwhelming evidence to the contrary – namely, if 60-70% of all people indeed carry and shed HSV,

we would expect far more cases of neonatal herpes – while this question still must be asked, it must be asked with caution. While, as we noted, the true incidence may be underreported, it is difficult to know.

Though we agree with these general sentiments, we strongly oppose the parallel invoked by Dr. Eisenberg. "That smoking directly causes heart and lung disease was only conclusively proven many years after initial reports found an association. Unfortunately, this allowed cigarette manufacturers to hide behind the smokescreen of "no conclusive evidence" while continuing to peddle their wares unhampered." Though we cannot pretend to know Dr. Eisenberg's true intentions, we find the inferred parallel, or *nimshal* if you will, quite offensive. Namely, that the rabbis permitting *metzitzah b'peh* are "hiding behind a smokescreen" of some sort in efforts to accomplish an unmentioned goal. This suggestion has no place in scholarly Jewish discourse and we will not grant it credence by discussing it further.

3. We appreciate Dr. Eisenberg's enthusiasm towards "getting the facts" and agree that the currently available data and therefore our presented statistical analysis are incomplete. Indeed, for someone to play the role of investigator rather than reporter and launch "a large-scale study comparing the rates of neonatal herpes infections among those with direct *metzitzah b'peh* and those without" would be a praiseworthy task. However, we believe that such idealism will not find practical manifestations in the near nor far-off future. Constructing such a study would be difficult in itself, let alone convincing parents and more importantly *mohalim* to participate. Given these conditions, we are left to speculate to the best of our ability, which we readily admit is far from complete, to provide analyses and theories that may help establish guidelines and policies in the present.

Lastly, Dr. Eisenberg joins several others is suggesting that "allowing only those recently tested negative for herpes to perform traditional *metzitzah b'peh*" would certainly reduce this risk. We certainly agree that some form of testing would be preferable, but given the current state of medicine, the blood test will label far too many false positives while a mouth swab to identify only active infection is not practical in terms of cost, availability and timing. This issue must be explored further in the hopes of identifying a more accurate, reliable, and cost efficient method of obliterating the risk entirely.

David and Raymond

David Shabtai and Raymond Sultan, M.D.

Hi,

I am Jay Reidler (Harvard College '09; currently studying Refuah V'Halacha in Yeshivat Hakotel for the year; I've enjoyed coming to the Schlesinger lectures very much over the year).

I read Dr. Steinberg's recent article in JME VI(1) on Anesthesia and Circumcision and it prompted some important questions:

1a) Let's take the theoretical example of a patient with a malignant tumor on their skin. A doctor has a chiyuv (V'Hashevota Lo, etc) to remove that tumor, and is permitted to cut off/around the tumor, since the issur of chabala (hurting someone) is overridden/ waived. Now let's say the doctor cuts off the tumor without any anesthesia, and in so doing causes unnecessary pain to the patient (there's was no medical justification for not using anesthesia) -- has he violated any issur (e.g. chabala)???. My impression is that the doctor had permission to do a certain amount of chabala (i.e., cutting off/around the tumor), but did not have permission to cause unnecessary pain and so he does violate an issur.

1b) If the doctor does violate an issur in question 1a for causing unnecessary pain, would a patient be permitted to accept such a treatment without anesthesia, if doing so has no medical benefits? If my understanding of chabala in question 1a is correct, this would not be allowed either because it would be tantamount to self-inflicted chabala, which is also an issur?

This question is very relevant to medicine in general, because it examines whether a doctor has a chiyuv to minimize pain even when he is doing a necessary/permitted treatment, and asks if an issur is overridden if he doesn't (other example - a doctor who can give a local anesthetic before giving a shot, but doesn't because "the child won't remember" or "it's too much of a hassle for a small shot and not worth it...").

I believe R' Moshe Feinstein took the idea of causing unnecessary pain into account when determining whether to prolong the life of the terminally ill patient - but I don't recall him employing the concept of chabala.

2) The relevance of the above question to Dr. Steinberg's article is as follows: Dr. Steinberg seems to conclude that, while according to some poskim one may not use anesthesia for an infant/adult, according to many it is permitted (mutar) to use anesthesia on an infant. Now, if we hold according to the latter poskim that it is mutar, shouldn't it be a chiyuv to use anesthesia! The mitzvah of circumcision gives us right, perhaps by the concept of aseh docheh lo ta'aseh, to cause a certain degree of chabala to the child (e.g. removing the arlah), but does it give us permission to cause unnecessary pain while doing this?? In the time before anesthesia, the mitzva of brit milah may have allowed us to inflict pain while doing circumcision because there was no alternative, but now that we have anesthesia, do we still have permission to cause this unnecessary pain?

Thank you very much

Jay Reidler

There are two elements in Jay Reidler's interesting claims. First, he emphesizes that even where the fulfillment of a mitzvah supercedes the prohibition to injure a person, it is still necessary to minimize suffering as much as possible. He theorizes further that a failure to minimize suffering constitutes a violation of unnecessarily injuring a person.

Second, he applies this principle to the mitzvah of circumcision. He claims that if palliative (pain relief) treatment is permitted and not medically counterindicated, then halacha requires it so that the prohibition of injuring not be violated.

These claims call for two comments:

First, the obligation to avoid pain whenever possible is not undermined, as it does not depend on the fulfillment or the violation of the prohibition of injuring. This obligation derives from the verse "Love thy neighbor like thyself (Lev. 19)". This verse obligates us to minimize suffering even in people who have been sentenced to death by the court (Sanh. 52a, etc.). Therefore, we are clearly required to reduce the suffering of a circumcised infant whenever it is medically justified and free of any halachic prohibition.

Second, it is by no means obvious that failure to minimize suffering constitutes a violation of the prohibition of injuring a person when the injury itself is permitted. For example, the Kesef Mishna (Mamrim 5:7) implies that only unnecessary physical injury violates the prohibition of injury, not unnecessary pain added to an underlying act of permitted injury. If so, Jay Reidler's beautiful theory is problematic and calls for careful study of the medieval commentaries on Sanh. 84b, etc.

In summary, administering sucrose or sweet wine to the infant before the circumcision is certainly advisable as far as the halacha is concerned as there is today no doubt that this reduces the infant's pain.

From the medical point of view, local anesthesia entails some risk as Prof. Steinberg mentioned in his article. The risk is, however, very small. But since we are dealing with scores of thousands of circumcisions, or hundreds of thousands worldwide, the risk of an infant's death is real. Therefore, there is neither medical nor halachic justification for such anesthesia.

Pain relief medication has not yet been proven completely safe for infants. The same can be said for laser procedures. Therefore, it is inadvisable to perform epidemiological experiments on newborns.

Aside from sucrose and sweet wine, treatment with EMLA, which the great poskim have not prohibited, remains an option to be decided upon by the rav, the parents, and the mohel.

Sincerely,

Mordechai Halperin