

Self-Endangerment to Save Others

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Must physicians risk their own lives to treat their contagious patients?

Apr 25, 2003 TORONTO (Reuters) - Exhausted health workers on the front line of Toronto's battle against SARS must also cope with the frightening knowledge that they are most at risk, and there is no fail-proof way to protect them . . .

Historical Perspectives

Physicians have been treating contagious diseases for millennia. As a result, the death toll in the medical profession has been significantly higher in times of epidemic. This reality has come to the forefront over the past decade with the spread of Severe Acute Respiratory Syndrome (SARS), the threat of Avian Flu, and the recent pandemic of H1N1 (Swine Flu). In 2003, there was worldwide SARS panic, with planes detained, medical meetings cancelled, and embassies reduced to skeleton crews. The medical profession was particularly hard-hit by the SARS pandemic, with many healthcare workers becoming ill and dying of SARS. Even the physician who first recognized SARS died of it.

But we must separate the true risk from the hysteria. Despite grim predictions in early 2003, when the SARS pandemic spread from one province in China to 37 countries within a few weeks, the World Health Organization estimated that by the time SARS had run its course in mid June, it had infected only 8,096 people and caused 774 deaths worldwide.¹ This should be compared with the statistic that influenza kills between

250,000 and 500,000 people each year around the world. Even in the United States, with a vaccine and modern medical care widely available, the flu kills at least 36,000 people a year. The "Spanish flu" pandemic of 1918 killed between 40 million and 50 million worldwide, most of them young, healthy adults. The "Asian flu" and "Hong Kong flu" pandemics of 1956-1957 and 1967-1968 killed a combined 4.5 million people.

The AIDS Epidemic

The reality is that despite the increased risk, it is not common for physicians to refuse to treat flu patients for fear of becoming infected themselves. However, sometimes paranoia and raw emotion drive calls for patient quarantines and refusals of healthcare workers to treat infected patients, even when not fully justified. HIV is the most recent example of such behavior, where some healthcare workers refused to treat AIDS patients, despite the fact that the risk of becoming infected by casual contact was virtually nonexistent. The Centers for Disease Control reported in 2001 that they were "aware of 57 health care workers in the United States who have been documented as having seroconverted to HIV following occupational exposures." There were "137 other cases of HIV infection or AIDS among health care workers who have not reported other risk factors for HIV infection" and reported occupational exposures, but did not have documented seroconversion after exposure.² Overall, the total is

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¹ World Health Organization, "Summary of probable SARS cases with onset of illness from 1 November 2002 to 31 July 2003," http://www.who.int/csr/sars/country/table2004_04_21/en/index.html. The last naturally occurring case occurred in June of 2003.

² The documented cases of seroconversion after an occupational exposure were as follows: Nurses (24), clinical lab technicians (16), nonsurgical physicians (6), non-clinical lab technicians (3), housekeeper/ maintenance workers (2), surgical technicians (2),

still a very small number considering the prevalence of the disease, the frequency of needle sticks and other occupational exposures, and the over 25 years that HIV has been recognized.

Nevertheless, early in the AIDS epidemic, before the mode of HIV transmission was clearly understood, self-endangerment was a legitimate concern for medical personnel treating AIDS patients. Even after the mode of transmission was confirmed, fear of occupational exposure raised serious concerns. This perceived risk, coupled with the moral aspects of HIV transmission inspired several halachic treatises on AIDS which grappled with the issues of caring for contagious patients.³

The Present

We now confront the specter of worldwide pandemic once again with the spread of the H1N1 virus and with it a threat particularly to healthcare workers.⁴ But the phenomenon of risk to healthcare workers is nothing new. Healthcare workers have always been endangered in times of epidemic as they have close contact with ill patients. In recognition of this increased risk, healthcare workers are encouraged to receive yearly flu vaccinations. The Advisory Committee on Immunization Practices, a group that provides recommendations to the CDC, voted on July 29, 2009 to set H1N1 vaccination priorities for those

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concentrated among children and young adults.⁶

The Mitzvah to Heal

Physicians have traditionally been willing to treat patients with communicable diseases despite the risk to their own lives. What is the source for this practice, is it obligatory to treat such patients, and if so, is there any limit to the obligation to do so?

There is actually a great deal of controversy in Jewish halachic literature as to from where we derive the mandate to heal. While most authorities derive a very broad mandate, there are a few well-known minority opinions that severely limit the scope of the authorization to provide medical care.⁷

embalmers/morgue technicians (1), health aides/attendants (1), respiratory therapists (1), and dialysis technicians (1). There were no documented cases of seroconversion after an occupational exposure in dentists and dental workers, EMTs/paramedics, surgeons, other technicians and therapists, or other healthcare occupations. These statistics remained unchanged as of September 14, 2007, as per the Centers of Disease Control. <http://aids.about.com/od/dataandstatistics/qt/healthstats.htm>

³ See for example: Rosner, F., "Communicable Diseases and the Physician's Obligation to Heal," *Medicine and Jewish Law*, Vol. I, Jason Aronson, Inc., New Jersey, 1990, pp.65-87; Steinberg, A., "AIDS: Jewish Perspective," *Medicine and Jewish Law*, Vol. II, Jason Aronson, Inc., New Jersey, 1993, pp.89-102; Bleich, JD., "AIDS: Jewish Concerns," *Bioethical Dilemmas: A Jewish Perspective*, Ktav Publishing House, Inc, Hoboken, NJ, 1998, pp. 131-185; Rosner, F., "AIDS: A Jewish View," *Biomedical Ethics and Jewish Law*, Ktav Publishing House, Inc, Hoboken, NJ, 2001, pp.91-108.

⁴ The World Health Organization declared the H1N1 virus a global pandemic on June 11, 2009.

⁵ United States Health and Human Services Secretary Kathleen Sebelius has stated that pregnant women, health care workers and adults caring for infants less than 6 months of age are among the most vulnerable segments of the population. http://www.nola.com/health/index.ssf/2009/07/swine_flu_vaccine_priorities_i.html

⁶ The Report of the President's Council of Advisors on Science and Technology, released on August 24, 2009. "In contrast, the 30,000-40,000 annual deaths typically associated with seasonal flu in the United States occur mainly among people over 65." http://www.whitehouse.gov/assets/documents/PCAST_H1N1_Report.pdf

⁷ Ibn Ezra (Exodus 21:19) is a notable example, writing that the command to heal "is a sign that permission has been granted to physicians to heal blows and wounds that are externally visible. But, all internal illnesses are in God's hand to heal." The Ibn Ezra's case is not a hard one to make. The Torah itself instructs that if we listen carefully to the mitzvos of the Torah "then any of the diseases that I placed upon Egypt, I will not bring upon you, for "I am God, your Healer" (Exodus 15:26). This verse implies that God does not need man to cure the afflictions that He creates. The Ibn Ezra argues

The Talmud derives the obligation to rescue one's endangered fellow from the verse: "Do not stand over your neighbor's blood."⁸ This verse, however, only appears to require one to prevent accidents or injuries, it does not necessarily imply any duty to heal. Perhaps one only learns the obligation to react to an external danger threatening a neighbor, but not a true mandate to practice medicine.

A more direct source is the Biblical passage regarding two men fighting.⁹ If one man strikes another and the victim does not die,¹⁰ "[the aggressor] shall pay for his [lost] time [from work] and he shall cause [the victim] to be thoroughly healed." Rashi, a preeminent Biblical commentator, explained that this passage instructs us that "he shall pay the fee of the physician." Clearly, if the aggressor is commanded to pay the doctor's bills, then seeking medical treatment and providing medical treatment must be permissible, but not necessarily obligatory.¹¹

Maimonides derives a true obligation to heal from the verse "and you shall return it [a lost object] to him."

Maimonides takes it a step further and derives a true obligation to heal from the verse "and you shall return it [a lost object] to him."¹² While other commentators interpret this verse to command one to return a person's "lost body" as well as his lost property (i.e. aid one's friend in times of danger), Maimonides goes further and derives the obligation of physicians to treat patients from this verse. Furthermore, he states that this verse represents a Biblical commandment to every person, each according to his ability, to restore the health of his fellow man.¹³ As such, not only may we not stand idly by as our neighbor is endangered, but we must aggressively attempt to return his health to him, including utilizing medical treatments.

Obligation to Guard one's Health

While the physician or nurse is bound to treat the sick, they are also bound by the Torah obligation to protect their own health. The Torah contains several commandments regarding personal safety. For example, the Torah requires the building of a guardrail (*ma'akeh*) around any flat roof, to prevent someone from falling.¹⁴ Maimonides explains this requirement to include being proactive in eliminating all preventable risks, such as building a fence around an unguarded swimming pool.¹⁵

In addition to removing hazards, the Torah twice commands us to protect our health, safety and well being, stating: "Only beware for yourself, and greatly beware for your soul. . ." and "But you

that the meaning of this Torah passage is that because God acts as the (sole) healer of all illness, we will not need physicians. The Talmud (*Sanhedrin* 101a) interprets this verse as explaining that God will not bring diseases upon those who follow his commands, but even for those who do not obey and are stricken, God remains the Healer. Rashi explains the verse to mean that the Torah was given as a way of life that will prevent man from becoming sickened by disease. Many other interpretations are brought for this enigmatic passage, including that Heavenly cures come easily without side affects (Ba'al HaTurim) and that God cures even mental and spiritual illnesses (Malbim). Despite the variety of interpretations, the consensus of opinion rejects Ibn Ezra's approach, permitting and even obligating the physician to heal, and ruling that man is a partner with God in healing disease. This approach is codified in the *Shulchan Aruch, Yoreh Deah* 336:1 with the words "The Torah gives permission to the physician to heal; moreover, this is a mitzvah (religious obligation) and it is included in the mitzvah of saving a life. . ." See Eisenberg, D, "The Mandate to Heal,"

http://www.aish.com/societyWork/work/The_Mandate_to_Heal.asp.
Leviticus 19:16

⁸ Leviticus 19:16

⁹ Exodus 21:18-19

¹⁰ Because if the victim died, it might be a capital crime.

¹¹ While this is the common understanding, Nachmanides (Ramban) in his Biblical commentary to Leviticus 26:11 is an important contrary opinion advocating a limited scope for human healing. Nachmanides explains that while it may be permitted for the doctor to heal (based on Exodus 21:19), the patient should not seek medical attention from a physician, but should rely on God for

healing. He limits the role of the physician to providing advice on healthy lifestyle.

¹² Deuteronomy 22:2

¹³ Maimonides, *Perush HaMishnayo, Nedarim* 4:4. *Torah Temimah* (Exodus 21:19 and Deuteronomy 22:2) explains that Maimonides chooses the verse "you should restore it to him" (Deuteronomy 22:2) as a source for the mandate to heal over the verse "and he shall cause [the victim] to be thoroughly healed" (Exodus 21:19) because the verse commanding the return of a lost object creates an obligation to heal, while the command to cause the victim to be thoroughly healed only grants permissions to heal.

¹⁴ Deuteronomy 22:8

¹⁵ *Mishneh Torah, Hilchos Rotzeach U'shmiras Hanefesh*, 11:4

should greatly beware for your soul. . .”¹⁶ These Torah prohibitions find practical application in the Talmud, with prohibitions against dangerous activities such as walking near a shaky wall, lest it fall and injure the passerby. Similarly, many other dangerous pursuits are proscribed.

Further on in his legal magnum opus, Maimonides¹⁷ expands on the obligation to guard one’s health, giving multiple examples of dangerous activities that are rabbinically forbidden, many of them far less dangerous than some of the activities in which we engage today. Many of these specific actions, such as putting coins in one’s mouth are codified in the *Code of Jewish Law (Shulchan Aruch)*.¹⁸ Rabbi Moshe Isserles (Rama), in his glosses to the *Shulchan Aruch*, rules that:

“One should avoid all things that might lead to danger because a danger to life is stricter than a prohibition. One should be more concerned about a possible danger to life than a possible prohibition. . . And all of these things are [forbidden] because of potential danger and he who is concerned with his health avoids them. And it is prohibited to rely on a miracle or to put one’s life in danger by any of the aforementioned or the like.”¹⁹

Situations in Which Risk is Permitted

The Talmud explains that when one enters a situation of danger, God examines his deeds to see if he deserves to be saved from harm.²⁰ For this reason, one should not enter into a dangerous situation without a valid reason. Yet even a valid reason may not suffice. For instance, one might postulate that one may undergo danger to do a mitzvah (religious duty), relying on heavenly

protection. However, even though there is a concept that someone who is on a mission to do a mitzvah will not be harmed,²¹ the Talmud explains that this may not be the case if the danger is likely to occur (*shach’iach hazekah*).²² It seems that even for mitzvah observance, a distinction can be drawn between pre-existing danger (such as swimming in shark-infested water) and danger that may develop (such as the risk of driving a car), with the one performing the mitzvah only definitively protected in situations such as the latter case.²³

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As a rule, any action that presents an unnecessary preventable risk to health or life must be avoided. Nevertheless, there are exceptions to the prohibition of deliberately entering a dangerous situation and there is latitude in evaluating how much risk is acceptable. There are several instances in which the Talmud queries why certain potentially dangerous actions are permitted.²⁴ The Talmud concludes that a person need not avoid small risks that are accepted by the rest of normal society without undue concern. The rationale for this ruling is that while we may not take indiscriminate risks, we may go about normal activities of daily living with the guarantee of heavenly protection. This is derived from a statement in Psalms: “*shomer peta’im Hashem-God watches over the simple.*”²⁵ That is, one can rely on the promise that God watches over him as he does the simple activities of daily living, so long as the activity is widely practiced and carries a risk that is not considered significant by society.

For instance, since automobile travel presents an element of danger, we might think that it should be forbidden. Nevertheless, it is a risk accepted by

¹⁶ Deuteronomy 4:9 and 4:15

¹⁷ *Mishneh Torah, Hilchos Rotzeach U’shmiras Hanefesh*, 11:5-16

¹⁸ The laws of dangerous activities are brought down in the *Shulchan Aruch in Yoreh Deah* 116 regarding forbidden foods and in *Choshen Mishpat* 427 regarding the mitzvah of *ma’akeh* and removing hazardous conditions.

¹⁹ *Shulchan Aruch, Yoreh Deah* 116:5

²⁰ *Shabbat* 32a and *Rosh Hashanah* 16b

²¹ *Pesachim* 8a

²² *Yuma* 11a, *Kiddushin* 39b

²³ Weiner, R., “Treatment of Contagious Diseases,” available from the Jerusalem Center for Research, P. O. Box 57058, Jerusalem, Israel (<http://www.j-c-r.org>)

²⁴ *Shabbat* 129b, *Nida* 45a, *Yevamot* 72a, *Ketubot* 39a, *Avodah Zarah* 30b

²⁵ Psalms 116:6

society and most people do not give much thought to the danger. Therefore, driving with normal caution is permitted by normative Jewish law, despite the inherent small risk.

Judaism also recognizes the need to earn a livelihood as a second mitigating factor in allowing risky behavior. The Talmud asks: "Why does the worker climb a high ramp or hang on the tree and risk his life? Is it not to earn his wages?"²⁶ Therefore, the least we can do is pay him on time! This is the leniency for walking a tightrope high above a crowd or engaging in other dangerous professional pursuits which involve risks that most people would not accept.²⁷ Intrinsic in the Talmud's argument is the assumption that one may take risks to earn a living that would not otherwise be permitted. Someone has to paint the bridge, build the skyscraper, mine the coal, and dive for pearls. So long as the risk stays within "reasonable" parameters, such activities are permitted as professions.

The crucial question of what constitutes "reasonable" risk in a medical scenario will be discussed later. At a minimum, Jews are obligated to avoid unnecessary behavior that contains immediate risk that is not associated with their professions. One should wear seatbelts, drive at the speed limit, and avoid dangerous social activities such as illicit drugs.

Clashing Obligations

Regardless of the source for the mandate to heal, Judaism clearly accepts that mandate and Jews have played an important role in providing medical care for many centuries. The Torah's directive to heal has been the basis of the Jewish physician's responsibility to treat his patient. From a Torah perspective, barring mitigating circumstances, the physician (like anyone else in a position to save an endangered neighbor) must

²⁶ *Baba Metzia* 111b-112a

²⁷ Rabbi Moshe Feinstein dealt with issue of professional risk in a responsa dealing with whether a Jew may play baseball. *Iggrot Moshe, Choshen Mishpat* I:104

treat the sick.²⁸ Therefore, we must ask how far the obligation extends. Does the physician have to endanger his own life to treat a patient with a dangerous contagious disease?

In such a case, the healthcare worker is caught between the proverbial rock and a hard place. While mandated to heal, the Torah also commands the healthcare worker to zealously guard his own health.²⁹ The doctor must ask the question: May I expose myself to a questionable danger to save someone else from a definite danger? The answer to that question is the subject of dispute.

The Obligation to Save a Life

To evaluate this question, we must analyze whether there is a distinction between the obligation to save another from harm when one's own safety is at risk and the obligation to rescue when one's own safety is not at risk. As previously discussed, the Talmud derives the fundamental requirement to save another person from danger directly from the Torah. The Talmud³⁰ explains: "From where do we know that if one sees his friend drowning in a river, or if he sees a wild animal attacking him, or bandits coming to attack him, that he is obligated to save [his friend]? The Torah³¹ teaches: "Do not stand over your neighbor's blood (but rather save him)." According to Maimonides,³² this translates into a positive obligation to use your time, money and even your body to save your fellow.

In the last passages of his monumental commentary *Beit Yosef*,³³ Rabbi Joseph Karo discusses the Biblical obligation to save one's neighbor from harm, including the passage from the Talmud mentioned above and Maimonides' codification of the law of saving others from danger. He then adds the crucial concept that

²⁸ See Eisenberg, D., "Mandate to Heal," <http://www.aish.com/ci/be/48881967.html>

²⁹ Deuteronomy 4:9 & 4:15. See *Shulchan Aruch, Choshen Mishpat* 409:3 and 427:8.

³⁰ *Sanhedrin* 73a

³¹ Leviticus 19:16

³² *Mishneh Torah, Hilchos Rotzeach U'shmiras Hanefesh* 1:14

³³ *Beit Yosef, Choshen Mishpat* 426.

according to the Jerusalem Talmud,³⁴ the potential rescuer “is obligated to even place himself into questionable danger (*safek sakkana*) to save his fellow. The reason appears to be because the danger to his fellow is definite, but the danger to the rescuer is questionable.”

Interestingly, Rabbi Karo does not include this ruling in his later work, *Shulchan Aruch*. Two possible reasons are proposed for this fascinating omission. Rabbi Karo establishes in the introduction to the *Shulchan Aruch* that he rules according to the majority opinion of three major authoritative Rabbis: Maimonides (Rambam), Rabbi Yitzchak Alfasi (Rif), and Rabbeinu Asher (Rosh). Since none of these noted Jewish legal experts mention the ruling of the Jerusalem Talmud, it is reasonable that Rabbi Karo did not codify it in the *Shulchan Aruch*.³⁵ Alternatively, neither Rabbi Karo nor Rabbi Isserles include the ruling because the Babylonian Talmud,³⁶ generally considered more authoritative than the Jerusalem Talmud, renders a contrary ruling.³⁷

Must I Risk my Life to Save another?

Among the earliest responsa on the topic of risking life to save others were those of Rabbi David

³⁴ Jerusalem Talmud, *Terumot*, end of 8th chapter

³⁵ *S'ma*, *Shulchan Aruch*, *Choshen Mishpat*, 426:2

³⁶ *Sanhedrin* 73a and *Nida* 61a

³⁷ *Pischei Teshuvah*, *Shulchan Aruch*, *Choshen Mishpat*, 426:2. The actual ruling of the Babylonian Talmud is probably found in *Sanhedrin* 73a; see Maharam Shik on the 613 mitzvos, mitzvah 238, and *Aruch L'ner*, *Sanhedrin* 73a. Alternatively, the argument may be that found in *Baba Metzia* 62a, regarding the disagreement between Rabbi Akiva and Ben Petura regarding whether someone must share the last of their water with someone else if it will possibly endanger the owner's life. The *Ohr Someach*, *Hilchos Rotzeach U'shmiras Hanefesh* 7:8, points out that Maimonides' ruling that an inadvertent murderer may not leave a city of refuge, even to save the whole Jewish nation, proves that one may not enter a questionable danger to save others from a definite danger. *Minchas Chinuch* 296 rules that just as all mitzvos in the Torah are pushed off for a possible serious danger (*safek sakkana*) based on the verse, “and you should live by them,” (Leviticus 18:5) so too the mitzvah of “Do not stand over your neighbor's blood” is superseded by a possible serious danger.

ben Solomon ibn Avi Zimra (Radbaz), a contemporary of Rabbi Karo in Safed in the 16th century. The Radbaz³⁸ was asked a chilling question. What should one do if a government officer threatens: “Let me cut off one of your limbs in a way that you will not die, or I will kill your friend!” After bringing several proofs that one might have an obligation to lose one's limb, he concludes that if there were even a questionable risk of death (*safek sakkana*), then one who agrees to lose his limb would be a pious fool (*chasid shoteh*) -- the Talmudic description of one who goes far beyond the call of duty based on a perverted religious ideal.

In a second responsum,³⁹ the Radbaz further fleshes out the issues involved in entering into a dangerous situation in order to save others. He was asked about a technicality in Maimonides' ruling that “anyone who can save his fellow and does not save him has transgressed the commandment: “do not stand over your neighbor's blood (but rather save him).” The Radbaz explains that Maimonides' ruling applies when the rescuer undergoes no danger to himself whatsoever, such as warning a person asleep beneath a shaky wall to get up or to share life-saving information with someone else. He then adds that:

“[he must save his friend] even if there is a small possibility of danger (*safek sakkana*) to the rescuer. For example, if he sees his friend drowning in the sea or bandits coming to assault him or [sees him] being attacked by a wild animal -- all of which entail a possibility of danger -- nevertheless, he still must rescue [his friend] . . . even in a place that there is a questionable danger, there is an obligation to save, and this is [found] within the Jerusalem Talmud. However, if the questionable danger approaches certainty,

³⁸ Responsa Radbaz, Volume 3:627 (1052)

³⁹ Responsa Radbaz, Volume 5:218 (1582)

one is not obligated to take the risk to himself of saving his friend. And even if there is [only] an even danger, one is not obligated to risk himself because who says that his [friend's] blood is more valuable, perhaps [the rescuer's] blood is more valuable. But, if the [degree of] questionable [risk] is not significant, rather rescue seems likely and without [significant] risk to the rescuer, and he does not [attempt to] rescue, he has transgressed [the prohibition of] 'do not stand over your neighbor's blood.'"

These apparently contradictory rulings of the Radbaz are reconciled by Rabbi Ovadia Yosef,⁴⁰ former Sefardi Chief Rabbi of Israel, by explaining that the Radbaz's first responsa, that rules that one who risks himself to save another is a pious fool, refers to when the odds of danger to the rescuer are 50% or greater. When the odds are lower, the second responsa applies. Rabbi Yitzchak Zilberstein takes a different approach, arguing that

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the Radbaz only requires one to enter into a situation involving a doubtful risk to save someone, if in a different scenario, he would be willing to enter into such a risk for his own benefit.⁴¹

The Balancing Act

Rabbi Abraham Tzvi Hirsch Eisenstadt, author of the *Shulchan Aruch* commentary entitled *Pitchei Teshuvah*,⁴² explains that the would-be rescuer must carefully evaluate the situation to ascertain whether he will truly be putting himself into danger if he attempts the rescue. He warns that the potential rescuer should not be overly cautious with his own health and well-being. A similar

ruling appears in the Talmud⁴³ and with respect to the return of lost objects is recorded by the *Shulchan Aruch*⁴⁴ itself.

The *Shulchan Aruch* analyzes this issue when discussing another topic as well. In that regard, when discussing the primacy of saving life over guarding the Sabbath, Rabbi Karo⁴⁵ rules that it is a mitzvah to transgress the Sabbath in order to save people from a sinking ship, from a flood, or to rescue one being pursued by assailants. Our question again arises: how much risk must one take in attempting to save another? Rabbi Yisroel Meyer Kagan (Chafetz Chaim), in his seminal commentary to the *Shulchan Aruch* entitled *Mishnah Brurah*,⁴⁶ rules that one is not obligated to risk one's own life to save others if there is definite danger (*vaddai sakkana*) to the rescuer. He writes that even a question of danger (*safek sakkana*) to the rescuer outweighs the definite danger (*vaddai sakkana*) to the endangered party. However, concurring with the ruling of Rabbi Eisenstadt, he mirrors earlier rulings that state that if there is only a question of danger (*safek sakkana*), the would-be rescuer should evaluate the situation to make a judgment about the actual risk involved in saving the endangered party and not be too overly cautious with the risk to his own life.

To understand how to weigh various dangers mentioned above, one must ask exactly what *vaddai sakkana* and *safek sakkana* actually mean? While *vaddai sakkana* and *safek sakkana* are mentioned throughout halachic literature, their exact definitions are not clear and may represent different concepts in different sources. Sometimes, they may merely represent different degrees of statistical risk, with *vaddai sakkana* meaning a great risk and *safek sakkana* meaning a lesser risk. In the case above, this would mean that the passengers of the sinking ship face a very great danger and the rescuer may only face a small danger.

⁴⁰ Nishmat Avraham, *Orach Chaim*, 329:6 (Hebrew)

⁴¹ Zilberstein, Y., "Endangering One's Own Life in Order to Save that of Another," *Assia*, journal 41 (11:1), 1986, pp. 5-11. Republished in *Sefer Assia 7*, Dr. Falk Schlesinger Institute for Medical-Halachic Research, Jerusalem, 1993, pp. 3-9.

⁴² *Pitchei Teshuvah*, *Shulchan Aruch*, *Choshen Mishpat*, 426:2

⁴³ *Bava Metzia* 33A

⁴⁴ *Shulchan Aruch*, *Choshen Mishpat*, 264:1

⁴⁵ *Shulchan Aruch*, *Orech Chaim*, 329:8

⁴⁶ *Mishnah Brurah*, 329:19

However, it is possible that from a Jewish ethical perspective, there is an intrinsic distinction between *vaddai sakkana* and *safek sakkana* with *vaddai sakkana* representing an actual danger and *safek sakkana* representing a questionable risk. An actual danger may represent a known threat to life, such as certain diseases or dangerous situations. A questionable risk may mean that there is merely a possibility that there is a danger to life (versus a known extent danger which is considered a true danger). In the case of the sinking ship mentioned above, a definite risk may be sharks in the water, while a questionable risk may be the possibility that there are sharks in the water. In such a case, one should honestly evaluate the probability of sharks in the water and choose to attempt rescue (if he can swim) if the probability of sharks is small. Regardless of what is the exact definition of definite and questionable risk, Jewish law stresses that one should not use a far-fetched risk as an excuse to withhold treatment.

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How Much Risk is Too Much?

If even a questionable risk to oneself outweighs a certain risk to another, how does one make a decision regarding how much self-endangerment is appropriate? Rabbi Isser Yehuda Unterman, a former Chief Rabbi of Israel, presents a very practical approach to decision-making when one's own safety and the safety of another conflict.⁴⁷ He states:

“We need to place boundaries on what constitutes questionable danger (*safek sakkana*) so that we do not claim that every concern or doubt that occurs to him when faced with the need to save a life will be considered questionable. For example, if a

man is drowning in a river and there is another man who knows how to swim and is able to save him but he is hesitant to act because perhaps the cold water will harm him and cause him to catch a cold - is this called “*safek sakkana*”? Or when he hears the screams of his neighbor who cries for help because men have attacked him, is it possible to say that he is exempt from helping in all situations like this because of the concern that perhaps they will injure him? We must say that this situation requires guidelines.”

It appears to me that the guidelines are simple - by evaluating the level of danger by the willingness of a person to save his wealth from destruction. The evaluation needs to be the following: if one would refrain from jumping into a river to save his wealth that the river has swept away on account of a concern for the danger of cold water - it appears that in this instance it would be categorized as a *safek sakkana*. Or if he were prepared to forgo his possessions and belongings as long as he would not need to enter in a place of attackers, and similar cases. However, on account of a great loss, he would not *refrain*, this proves that in truth, there is no danger (*i.e.* he does not consider the situation to be a serious danger) and certainly he is obligated to come to the aid of his fellow, as it is written, “do not stand over your neighbor's blood. This is simple.”

Rabbi J. David Bleich writes that Rabbi Unterman's approach can be easily applied in a medical context as well.⁴⁸ He argues that:

“If a physician wishes to know whether he should expose himself to a certain degree of risk, let him assume that the fee offered for this necessary treatment is an exorbitant one. Would he be willing to accept the risk to earn a small fortune? If the answer is in the affirmative, he should also regard the

⁴⁸ Bleich, JD., “AIDS: Jewish Concerns,” *Bioethical Dilemmas: A Jewish Perspective*, Ktav Publishing House, Inc, Hoboken, NJ, 1998, pp. 164-169

⁴⁷ Responsa *Shevet M'Yehuda* 1:9.

preservation of a life as sufficient motive. Under such circumstances it should be anticipated that the physician will subject himself to the same degree of risk in order to preserve a human life without regard for the size of the fee or even the absence thereof. For the medical practitioner treating patients in a clinical setting in which there is some danger to the physician, the appropriate rule of thumb is whether the physician regards the risk as being so grave that no possible fee would make the risk worthwhile to him. But if the same physician is prepared to set aside those concerns for a fee commensurate with the danger, it follows that, even if the patient is charity case, the physician should be advised to accept the risk as inherent in what is expected of all human beings in terms of their obligation vis-à-vis their fellows.”

As Rabbi Bleich points out, this analysis only applies in certain situations. Some risks are so minor that they are treated as non-existent and the physician clearly has an absolute obligation to treat despite the minimal risk. Conversely, some risks are so great that treatment is virtually suicidal and the physician should not be expected, and may not be permitted, to treat. Rabbi Bleich argues that it is to the intermediate situations that Rabbi Unterman’s approach applies – those situations in which the physician is within his moral rights to refuse to treat, yet is halachically permitted to undergo the risk and treat.

Rabbi Bleich further asserts that while no individual can be compelled to enter into a dangerous profession, society is obligated to create a system in which all of its members will receive appropriate protection from fires, live in a safe environment, and receive healthcare, even if that entails some risk to the firefighter, policeman, and medical practitioner. He therefore argues that

in return for the physician bearing this responsibility, society must be reasonable in its demands and not ask the physician to enter into situations threatening excessive danger

society must use its resources (such as prestige and money) and confer benefits to attract qualified people to these professions and make such benefits contingent upon the physician agreeing to accept a degree of risk that society deems reasonable and necessary. As such, in return for the physician bearing this responsibility, society must be reasonable in its demands and not ask the physician to enter into situations threatening excessive danger.

Such an example becomes apparent when retrospectively considering the September 11, 2001 attacks on the World Trade Center Twin Towers. Hundreds of brave police and firefighters lost their lives attempting to rescue the people trapped in the towers. Due to the extraordinary circumstances, they probably did not recognize the tremendous risk in which they were placing themselves when they entered the buildings. Had it been known that there was a high likelihood that the towers might collapse, even from a secular perspective it would have been unreasonable for society to have expected them to enter, and Jewish law would almost certainly have discouraged or barred them from entering. As previously discussed, this is true despite the increased latitude that firefighters are granted by Jewish law to risk their lives, due to the intrinsically dangerous nature of their life-saving work. Such latitude only extends to reasonable risk that they are trained to undertake.

As a final caveat, it is sensible to expect that while an individual is not obligated to enter into a dangerous profession, the time to decide that one is risk-averse is before one joins the profession, not at the moment of danger when lives are on the line. A firefighter cannot reasonably choose to avoid exposure to fires that firefighters normally extinguish once he has chosen to enter the profession, undergone suitable firefighting training, and now stands before a burning building with endangered people in the building.⁴⁹

Practical Applications

The practical implication of these rulings is that a physician, like anyone else faced with potential risk to save his fellow, must be intellectually honest in every case of treating a patient with a communicable disease. If the risk to the physician is very great, then he is foolish to risk his life. On the other hand, if the risk to himself is very small, then he has no justification to refuse treating the very sick patient. The risk to the endangered person and the risk to oneself must be weighed. If one wishes to "save" someone who is in minimal danger, then he is permitted to take virtually no risk himself. On the other hand, if a boat with passengers who cannot swim is sinking and one is a qualified lifeguard, then one is required to take the very small risk inherent in saving the drowning victims.

Obviously, when calculating the risk to the physician, we assume that the physician will be taking all reasonable precautions in treating the sick patient. In the case of AIDS, where we now know that the risk to the treating physician is minimal, particularly when no invasive procedure is performed, there is little basis for refusing to treat. The obligation to treat when there is a very small danger is based on the concept of *shomer petaim Hashem*,⁵⁰ that is, God watches over the simple in their activities of daily life.⁵¹ One must not allow prejudice and paranoia to influence this issue. The physician must evaluate whether the risk of treating the contagious patient exceeds the level of risk that he is usually and habitually willing to take.

Thus, until the healthcare professional was assured that there was a relatively safe way to treat a patient with a deadly contagious disease (such as SARS or HIV), there was a justification to refuse

the time to decide that one is risk-averse is before one joins the profession, not at the moment of danger when lives are on the line

to treat the patient. There are precedents for such a position from an actual case⁵² that came before a prominent Israeli halachic authority. Rabbi Yitzchak Zilberstein was asked whether a physician in her first trimester of pregnancy is obligated to treat a patient with Rubella (German measles). Contact with the patient posed a 20% risk of the physician developing the disease, with an associated high risk of birth defects, miscarriage, or stillbirth. Rabbi Zilberstein ruled that the possibility of miscarriage represented a significant potential threat to the physician's life and she was therefore not obligated to treat the patient.

The issue of self-endangerment to save another does not only affect physicians. For instance, the issue of whether one may donate a kidney is dealt with in a similar way, with opinions ranging from calling the action a *middat chasidut* (extraordinarily selfless) to calling the donor a *chasid shoteh* (a pious fool). Most halachic authorities take the former position, because the risk to the donor is considered relatively small.⁵³ Nevertheless, one is definitely not required to donate a kidney, even to save someone's life, since there is a small risk of death from anesthesia, the surgery itself, and due to the small risks associated with having only one kidney. Of interest, Rabbi Yosef Shalom Elyashiv, arguably the greatest living halachic authority in

⁵² Zilberstein, Y., "Endangering One's Own Life in Order to Save that of Another," *Assia*, journal 41 (11:1), 1986, pp. 5-11. Republished in *Sefer Assia* 7, Dr. Falk Schlesinger Institute for Medical-Halachic Research, Jerusalem, 1993, pp. 3-9.

⁵³ Rabbi Ovadia Yosef (Responsa *Yechavah Da'at*. 3:84 and *Halacha U'Refuah*, vol. 3, Regensberg Institute, Jerusalem, 1983, pp.61-63), Rabbi Yaakov Yosef Weiss (*Minchat Yitzchak*, 6:103, p.2), Rabbi Eliezer Yehuda Waldenberg (responsa *Tzitz Eliezer* 9:4 and 10:25:7), Rabbi Moshe Meiselman (*Halacha U'Refuah*, vol. 2, Regensberg Institute, Jerusalem, 1981, pp.114-121), Rabbi Moshe Hershtler (*Halacha U'Refuah*, vol. 2, pp.122-127). Nevertheless, see Rabbi Yitzchok Yaakov Weiss (Responsa *Minchat Yitzchak* 6:103) who voices concern regarding the danger of the surgery and the future risk of having only one kidney. However, Rabbi Weiss permits the donation if one will definitely save the life of the recipient.

⁴⁹ This analogy was told to me by Dr. Avraham Avraham, author of *Nishmat Avraham*.

⁵⁰ Psalms 116:6

⁵¹ See Eisenberg, D., "Taking a Risk," <http://www.aish.com/ci/be/48880977.html>

Israel, rules that one must undergo pain and suffering to save the life of someone else.⁵⁴

The Special Case of Epidemics

Historically, the consensus of halachic opinion has been to flee in times of “plague.” Rabbi Immanuel Jakobovits, former Chief Rabbi of Great Britain, discussed this issue in his ground-breaking treatise, *Jewish Medical Ethics*, published in 1959.⁵⁵ He writes that “[t]his verdict was unanimous; there is no record of a dissenting opinion anywhere in Jewish literature.”⁵⁶ Rabbi Moshe Isserles, in his glosses to the *Shulchan Aruch* describing the prohibition of exposing oneself to danger, rules that “it is proper to flee from a town when a plague has broken out; and one should leave the place at the beginning of the outbreak, but not at the end.”⁵⁷ Such a tradition dates back to the time of the Bible (*Tanach*), when the prophet Jeremiah instructed the people “Whoever resides in the city will die by the sword, or by famine or by pestilence, but whoever goes out and defects to the Chaldeans who are besieging you shall live.”⁵⁸

***one must
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The Talmud teaches a similar conduct in time of epidemic. The Talmud⁵⁹ states that “if there is a plague in the city, gather in your feet.” This is interpreted to mean that at the beginning of a plague, one should immediately flee, but once the plague has taken hold, it is better to remain in the city.⁶⁰

Yet, despite the general prohibition of endangering one’s life, permission is granted to undergo risk for communal benefit. Rabbi Shlomo Luria, the author of the commentary *Yam Shel Shlomo*,⁶¹ commenting on the aforementioned Talmudic teaching, notes that:

“. . . There are those who wish to learn that during a plague it is forbidden to flee [the city] and there is a danger involved with doing so... However, I found it written⁶² in the name of great halachic authorities that it is permitted [to leave]... But nevertheless, if it is within his power to save others either with his body or with money, heaven forbid that he should refrain from doing so and remove himself from the suffering of the people. . . But, if heaven forbid he can make no difference (i.e. he cannot help the others), then we act according to what was written [in Tractate Shabbot 32A] that a person should not remain in the place of danger. . . And we see great people that went and fled to another place [in time of plague]. Regarding the Talmudic statement that one should ‘gather in your feet (and remain in the city),’ this applies when the plague has begun and already become strong (he might already be infected and might spread the plague) and more danger may be presented by travelling than by the plague itself. In such a case, one should stay sequestered. However, early in the plague, it is prudent to flee. Therefore, it appears that if a

⁵⁴ *Kovetz Tshuvos*, Vol. I, *Siman* 124. Similarly, Dr. Avraham Avraham records that Rabbi Shlomo Zalman Aurbach wrote to him that “if the seriously ill patient is present (and known to him. . .) it is certainly permissible for a person to even undergo much suffering, for example, by donating his kidney, to save the life of the patient.” (*Nishmat Avraham*, Vol. 2 *Yoreh Deah*, p. 347 (2003, Mesorah Publications, English).

⁵⁵ Jakobovits, I., *Jewish Medical Ethics*, Bloch Publishing Co., NY, 1959, pp. 106-110.

⁵⁶ *Ibid.* p. 12 cites *Shnei Luchot HaBrit (Shlah)*, *Sha’ar Ha’otiot* as affirming the ruling that fleeing from plague was accepted Jewish practice and decrying the “criminal negligence of parents who failed to evacuate their children from a district smitten by an outbreak of smallpox.” He states that this ruling was reiterated by Rabbi Yechiel Epstein in *Kitzur HaShlah* in 1683. Nevertheless, the position that fleeing from plague would be efficacious did raise theological questions regarding whether an individual’s lifespan is preordained. See Rabbeinu Bachaya, Numbers 16:21, Rashbash (Rabbi Shlomo Duran) 195, and *Pischei Teshuvah*, *Yoreh Deah* 116:8.

⁵⁷ *Shulchan Aruch*, *Yoreh Deah* 116: 5 based on Responsa Maharil 41

⁵⁸ Jeremiah 21:9

⁵⁹ *Bava Kama* 60b

⁶⁰ Responsa Maharil 41

⁶¹ *Yam Shel Shlomo*, 6:26

⁶² Responsa Maharil 50

plague has infected the city, one is obligated to flee if he has the ability. The exception is if he has already suffered from the plague and recovered, for the world knows that he has nothing to fear.”

This line of reasoning would imply that in the case of an epidemic, the only two groups of people who should remain in the affected area are those who are immune (and thus have little risk) and those who can help the public. This implies that one may (and possibly should) risk one’s life to treat the community. One source⁶³ even implies that one may choose to sacrifice oneself to save others. Nevertheless, it is almost unanimous that one is not required to do so.

Rabbi Yaakov Weiner, Dean of the Jerusalem Center for Research in Medicine and Halacha, stimulated by the implications of Rabbi Luria’s commentary, suggests an explanation for how someone could be obligated to endanger his life by remaining in the city, in a situation where he would be able to help others. He opines that the rationale behind the possible obligation to risk one’s life for the community in time of epidemic must be understood in light of our understanding of the Babylonian Talmud’s assertion that one is not required to enter into a situation posing a questionable danger to save someone else from a definite danger. In that case, there is only one endangered person and one rescuer. In such a case we might ask why the endangered person’s life is more valuable than the rescuer. But in the case of epidemic, where there are many endangered people, and the risk of many more becoming sick, even the Babylonian Talmud might concur that one may risk one’s life to save the community.⁶⁴

Rabbi Weiner then contends that:

where there are many endangered people, and the risk of many more becoming sick, one may risk one’s life to save the community

“With respect to public health workers who treat groups of people suffering from contagious life-threatening diseases, even if there would be an actual danger involved to their lives, they would not only be permitted to treat (endangering themselves in order to help many), but would indeed be obligated to (for they may not remove themselves from the community).”

After constructing a very specific criteria governing exactly when a healthcare worker is obligated to endanger himself to treat an epidemic,⁶⁵ he proposes the following encapsulation:

“This means that if the patient has a high probability of dying from the contagious disease, then before the health worker is allowed to treat, it must be the case that the probability of contracting the disease must be very low. Conversely, if the disease has a low mortality rate, then the health worker may treat even if the probability of being infected is high. (As

⁶³ Rabbi Weiner writes: “If fewer than ten individuals but more than one have contracted any contagious disease (and it would thus not be defined as a community), they may be treated, but no obligation devolves upon the health workers. However, if only one patient has been admitted to the hospital (even though throughout the city there are many) since one may not put one’s life in danger for only one individual, separating himself from a community would neither obligate nor permit him to enter a risk situation if not for the permissibility of earning a livelihood. (The rule of not separating oneself from a community only becomes an obligation when healing is permissible). In order for a health worker to be obligated to risk his life treating a person suffering from a contagious life-threatening disease, the following three conditions must prevail: 1. There must be at least ten persons in the city suffering from contagious diseases. 2. At least two of these persons must be present in the health worker’s care. 3. The joint probability of 1. the probability of the health care worker’s contracting the disease and 2. the probability of his dying of it as a result of caring for the patient’s living. For one does not have an obligation to put oneself into a greater danger than the one he is treating. In the case of three or more patients, the joint probability associated with each patient is calculated. The health worker can care only for those individuals for whom the joint probability is less than or equal to the expected probability of those patients living.”

⁶³ Migdal Oz, *Even Bochan*, 85

⁶⁴ Ibid. Weiner, R., “Treatment of Contagious Diseases.”

long as he doesn't put himself into a greater danger than those that he is treating.)

In a situation in which the patients suffer from incurable contagious diseases and remain with only short term life, it would seem to this author that it would be prohibited for a health worker to endanger his long term life in order to save many who only have short term life expectancy. One's full life would have preference over the short term life of many.”

Bikkur Cholim (Visiting the Sick)

The mitzvah of *bikkur cholim* plays an important role in Jewish society. While today visiting the sick is considered more of a social responsibility, for many centuries dating back to Biblical times, visiting the sick was a very practical necessity, since hospitals did not exist and patients could have been left helpless if unable to fend for themselves.⁶⁶

This mitzvah is composed of three main components: performing necessary housekeeping functions (such as cooking and cleaning), praying for the patient's recovery, and providing emotional support.⁶⁷ The *Code of Jewish Law* elucidates the details of exactly how this mitzvah is performed, including who should visit whom, when they should visit, and which patients should not be visited due to their particular illness.⁶⁸ In light of the strict restrictions on endangering one's health discussed earlier, is visiting a contagious patient included in the mitzvah of *bikkur cholim*?

This question is a matter of debate in the Jewish legal sources. Rabbi Immanuel Jakobovits⁶⁹ points out that while Rabbi Moshe Isserles rules that one should not distinguish between contagious and non-contagious patients, with the exception of

leprosy,⁷⁰ “others maintain that no one can be expected to endanger his life for the fulfillment of this precept.”⁷¹ Elsewhere,⁷² Rabbi Jakobovits asserts that “[a] recent re-examination of this question reaches the conclusion, based on several

one is not required to risk one's life for the sake of fulfilling merely the rabbinical precept to visit the sick

Talmudic narratives⁷³ – that the ruling of Isserles applies only to an infection which would not endanger the life of the visitor even if he caught it, such as jaundice, but that one is not required to risk one's life for the sake of fulfilling merely the rabbinical precept to visit the sick; nor can anyone be compelled to serve such patients.”⁷⁴ According to Rabbi Jakobovits, it was the view of

those who felt that one is not obligated to visit and care for those with serious contagious diseases that became the accepted practice.⁷⁵ In fact, the standard became to appoint special designated people to care for patients with serious contagious diseases and exempt the usual caretakers.⁷⁶

⁷⁰ Responsa Rema, 19 (end)

⁷¹ Ibid, Jakobovits, citing Rabbi Joseph Molko, *Shulchan Gavo'ah*, cited in *Sedei Chemed*, vol. 1, s.v. “beit,” no. 116 and Rabbi Samuel di Medina, Rashdam, *Choshen Mishpat* 346.

⁷² Jakobovits, I., *Journal of a Rabbi*, Living Books, NY, 1966, p. 156.

⁷³ *Nedarim* 39b; *Berachot* 22b; see also Rashi, *Shabbat* 30a

⁷⁴ Responsa *Beit David*, nos. 22 and 108, cited in *No'am*, vol. 2, p. 55.

⁷⁵ See Eisenstein, J.D., *Otzar Dinim Uminhagim*, (NY, Hebrew Publishing Company, 1938) who in the section regarding “visiting the sick and times of plague” writes: “One does not visit those who are ill with raatan, leprosy, or contagious diseases and one should not enter into danger. . . And thus it is the custom not to visit plague victim except by special people who are hired for that purpose.” But for those who do visit, “The book *Midrash Talpyot (anaf 1)* it writes that those who visit plague victims should not sit, but only stand and pace until they leave from there.”

⁷⁶ Rabbi Jakobovits reports that approval was expressed by the *Shulchan Gavo'ah* for the custom to only assign visitation to specially appointed, highly paid, people. He further reports that: “The 17th century records of the Portuguese Congregation in Hamburg indicate that even the communal doctors and nurses were exempt from the obligation to attend to infectious cases and that the required services were rendered by volunteers entitled to special remuneration.” This is despite the fact there is a concept that a messenger to do a mitzvah should not fear harm. See the discussion above in this article entitled “Situations in which risk is permitted.”

⁶⁶ See Kottek, S., “The Hospital in Jewish History,” *Reviews of Infectious Diseases*, Vol. 3, No. 4, July-August 198, pp. 636-9.

⁶⁷ *Nedarim* 40a.

⁶⁸ For a comprehensive and practical guide to the laws of visiting the sick, the book “Visiting the Sick: A halachic and medical guide with down-to-earth advice” by Rabbi Aaron Glatt, MD (Mesorah Publications, Inc., NY, 2006).

⁶⁹ Jakobovits, I., *Jewish Medical Ethics*, Bloch Publishing Co., NY, 1959, pp. 106-110.

Rabbi Yekutiel Greenwald considers the question of visiting and assisting patients with severe contagious diseases in his 20th century work titled *Kol Bo Al Aveilus*.⁷⁷ Garnering support from the ruling of the Jerusalem Talmud mentioned previously,⁷⁸ he rules that if there is hope for recovery of the patient from the illness, one is obligated to assist him. His rationale is that if he does not visit the patient, the patient will surely die and since it is a definite danger to the sick person, but only a *safek sakkana* (questionable or small danger) to the visitor, there is an obligation to help. However, if there is no hope of saving the patient, Rabbi Greenwald cites Maimonides⁷⁹ and agrees that one should not enter any danger to visit and assist the patient.

physicians have an extra obligation to heal the sick and they are permitted to endanger themselves to treat contagious patients

Are Physicians Different?

The last issue to consider is whether physicians, by virtue of their role in society, have a different responsibility to risk their lives to save others. Rabbi Eliezer Yehuda Waldenberg (known as the *Tzitz Eliezer* after his multivolume halachic work) deals with this exact question. Dr. Avraham Steinberg, author of the Encyclopedia of Jewish Medical Ethics, categorized the rulings of Rabbi Waldenberg in the following way:

"In principle, a person may not place himself in possibly life-threatening danger in order to save his neighbor's life. However, when discussing physicians, this law is somewhat modified. It is permitted for a physician to assume the risk of

treating patients with any type of contagious disease. Indeed, he is credited with the fulfillment of an important religious duty. When preparing to treat a patient with a contagious disease, the physician should pray to God for special guidance and protection since he is endangering his own life. A military physician is permitted to render medical care to a wounded soldier in a combat zone although he is endangering his own life. This applies even if it is doubtful whether the wounded soldier will live, die, or be killed. Similarly, another soldier is allowed to place his own life in danger in order to rescue a wounded comrade from the combat zone."⁸⁰

Rabbi Waldenberg clearly rules that physicians must recognize the danger into which they enter and pray for divine protection, but that they do have an extra obligation to heal the sick and they are permitted to endanger themselves to treat contagious patients.⁸¹ Going further, Rabbi Shmuel HaLevi Wosner, author of *Shevet Halevi*, rules that it is forbidden for physicians who can be of assistance to flee and to avoid their duty; rather they should protect themselves as much as possible in order not to be infected, according to the medical regulations of their time.⁸² Dr. Avraham Avraham reports⁸³ that noted posek (religious authority) Rabbi Yehoshua Neuwirth⁸⁴ told him that if a physician refuses to treat a contagious patient, he transgresses the Biblical prohibition of "do not stand over your neighbor's blood."⁸⁵ However, Rabbi Neuwirth concludes, if the danger

⁸⁰ Steinberg, A., "On the treatment which exposes the physician to danger," *Jewish Medical Law: A Concise Response*, Beit Shammai Publications, New York, 1989, Part 10, chpt. 11, pp. 177-78.

⁸¹ Responsa *Tzitz Eliezer* vol. 8, chpt. 15, 10:13 and vol. 9, chpt. 17:5

⁸² Responsa *Shevet HaLevi* vol. 8 chpt. 251:7

⁸³ Avraham, A., *Lev Avraham: Halachot of Refuah for Patient and Caregiver*, (updated and expanded), Feldheim Publishers, Jerusalem, 2009, pp. 356-57. See also, *Nishmat Avraham, Orach Chaim*, 329:6, pp. 502-4 and *Choshen Mishpat* 427:4:8, pp. 247-51 (Hebrew second edition)

⁸⁴ Author of *Shmirat Shabbat K'hilchato* and noted posek.

⁸⁵ Leviticus 19:16

⁷⁷ *Kol Bo Al Aveilus*, Vol. 1, chapter 1:2, footnote 5, p. 17.

⁷⁸ Jerusalem Talmud, *Terumot*, end of 8th chapter. Rabbi Greenwald writes that he recognizes that the Babylonian Talmud and many later rabbinic decisors disagree with the obligation to enter a questionable danger to save another from a certain danger.

⁷⁹ *Mishneh Torah, Hilchos Rotzeach U'shmiras Hanefesh* 1:7.

is substantial, one is not obligated to endanger oneself, but one may if one wishes.

The standard, however, is different on the battlefield. In times of war, the usual caveat that one's own life comes before that of one's friend⁸⁶ is waived and everyone, including the soldier, the medic, and the physician must risk their lives to rescue their comrades from a definite danger, even if they must enter a possible danger (*safek sakkana*) to do so.⁸⁷

All of these views are consistent with the traditional role of the physician throughout history who risked his life for the sake of his patients.

Conclusion

Physicians have treated the sick for millennia, often at the cost of their health or their lives. For an equally long time, Jewish law has debated the parameters by which it allows one to risk his/her life to save others. H1N1 only presents the most recent occasion to consider this question. While a small degree of risk need not preclude a physician from treating contagious patients (or anyone else with expertise from saving others in dangerous situations), intellectual honesty and accurate information regarding risks and benefits are required. Unfortunately, all relevant information is not always available when the need for treatment arises. While one should not be overly cautious at the expense of the lives of others, there is a limit to how much risk one may or must undertake.

Physicians are expected to undergo a greater degree of risk than others, due to their training and the crucial nature of their work, but still must be prudent in protecting their lives. This obligation extends to other people as well, whose task it is to enter dangerous situations to save others, such as soldiers and probably fire fighters. A lesser degree of risk for laypeople is usually acceptable when visiting and caring for the sick.

⁸⁶ *Baba Metzia* 62a

⁸⁷ *Responsa Tzitz Eliezer* vol. 12, chpt. 57

International Responsa Project

Subject: Aborting under the advice of one doctor

Date: June 2009

Answered by: Rabbi Mordechai Halperin, MD

Shalom rav,

I was just asked the following question, which I would like to present to you. The lady who asked me is pregnant in the 9th week of gestation. Two weeks ago, i.e. in the 7th week of gestation, an ultrasound was performed. It demonstrated that the embryo has had a heartbeat and was therefore viable. Now, two weeks later, a repeated ultrasound revealed absent heartbeat. The gynaekologist declared that an intrauterine death of the embryo has occurred and recommended the lady to let an abortion be performed.

Questions:

- 1. Is it pertinent to rely on the opinion of only one gynaekologist i.e., is there an obligation to consult another specialist?*
- 2. Is the absent heartbeat a halachically sufficient proof of death of the embryo? Or is only the case if proven on several occasions at different points of time?*
- 3. Should the death of the embryo be thereby proven, are there any halchically specific features of such an abortion?*

Thanks in advance, kol tuv

1. It is recommended to perform another ultrasound elsewhere before reaching a decision.
2. If the lack of a pulse has been confirmed in the second scan, taking into account the existence of a pulse in the past – it is a conformation that the embryo expired around the 9th week
3. When a dead embryo is present in the womb, the main considerations for its extractions are medical, not Halachic.

Continuation of IRP section on p. 68