

Can Eating an Unhealthy Diet be Halachically Forbidden? Is Trans Fat the New Smoking?

Raphael Hulkower

Introduction¹

The growth in popularity of the preventive medicine movement in recent decades has also produced a concomitant interest in Jewish circles regarding halachic perspectives on preventive medicine. Many rabbis, doctors, and scholars have seen a parallel between preventive medicine's doctrines of minimizing risk factors for disease and halachic principles regarding the obligation to avoid endangerment and prevent the loss of human life.² For nearly four decades, the discussion about the dangers of smoking has been at the forefront of both preventive medicine and halacha.³ While smoking, the leading cause of preventable deaths in the United States in 2000, has received much due attention in halachic discussions, obesity, the second most cause of preventable death in the

phrase kedoshim teheyu is intended to caution people to curb their physical desires away from excessive fulfillment

United States,⁴ has received fairly little halachic discussion. The purpose of this article is to review some of the halachic material on preventive medicine and smoking in order to discuss its applicability to the topic of unhealthy diets and obesity in general, and specifically the consumption of trans-fat. The goal of this article is to inspire discussion and introspection on this important topic rather than to reach a definitive halachic conclusion.

Can a Kosher Diet be halachically Forbidden?

Dietary restriction is one of the most fundamental aspects of Judaism. Many non-Jews are aware that pork or mixing milk with meat is "not kosher" and may not be eaten by Jews. Once people abide by the rules of *kashrut*, it is generally assumed that they have the freedom to choose what they would like to eat. While this statement is true on the whole, the Ramban, in his commentary on the Torah, warns that the phrase "*kedoshim teheyu*"⁵ teaches us the concept of *naval b'reshut haTorah* – that a person can still be disgustingly inappropriate within the bounds of halacha. He explains that by the letter of the law, once one follows kosher dietary laws, he may eat kosher food to his heart's content, even gluttonously. Nevertheless, the phrase *kedoshim teheyu* is

¹ I would like to thank Rabbi Dr. Edward Reichman for his advice and input on this article.

² See also Dr. James DiPoce and Dr. Shalom Buchbinder's article, "Preventive Medicine" in the Journal of Contemporary halacha and Society, Volume 42.

³ In 1957, the surgeon general of the United States declared it the official position of the U.S. Public Health Service that there was a causal relationship between smoking and lung cancer. Rabbi Moshe Feinstein's responsum discussing the permissibility of smoking was first written in 1964. In 1965, Congress required all cigarette packages in the U.S. to carry a health warning label. In 1981, Rabbi Feinstein repeated his opinion that smoking is not prohibited even if it should be avoided. In 2006, the Rabbinical Council of America issued a formal ruling that smoking is forbidden according to halacha, and they believe even Rabbi Feinstein would agree based on current medical information.

⁴ Mokdad et al., "Actual Causes of Death in the United States, 2000," *Journal of the American Medical Association* 291(10): 1238-45.

⁵ *Vayikrah* 19:2

intended to caution people to curb their physical desires away from excessive fulfillment.⁶ Throughout this lengthy comment, however, the Ramban is careful in his wording and never says that one actual violates a commandment in eating excessively. His actions are purely *unethical* when viewed from a religion perspective.⁷

***certain foods
can be
permitted or
prohibited for
health reasons
based on the
current
information of
the times in
which one is
living***

The Rambam, in Mishnah Torah, goes a step further by giving nutritional dietary advice. In Hilchot De'ot, the Rambam records his advice for proper daily conduct in all areas of life. He reserves the fourth chapter to describe his medical advice for healthy individuals to remain strong and not become ill. Most of the chapter revolves around nutrition. The Rambam

makes a general warning that “overeating is like a deathly poison to the body, and is the root of all illnesses. Most illnesses that afflict a man are caused by harmful food or by overeating even healthy foods.”⁸ He also specifically lists certain foods, such as aged and salted fish and cheese, which he believes are extremely harmful to the point that “it is worthy to never eat them.”⁹ However, like the Ramban, the Rambam also never declares that any of these foods, or overindulgence, is officially forbidden. Rabbi Moshe Feinstein notes this omission in his responsum declaring that smoking is not prohibited by halacha.¹⁰ Rather, Rambam’s advice is simply preceded by the exhortion that “maintaining a healthy and sound body is among

the ways of God, for one cannot comprehend or have knowledge of the Creator if he is ill.”¹¹ The only foods that the Rambam says are forbidden because they endanger life are those foods (mostly drinks) already forbidden by the Rabbis of the Talmud as they may contain poison.¹²

The question that remains is why did the Rambam not choose to forbid those foods that he believed are dangerous enough to be avoided completely? Is it because their effects are not felt immediately, as is the cause with poison? Or did he believe that they were dangerous enough to recommend against as a doctor, but not to forbid as a Rabbi. If the later is true, would the Rambam have forbidden these foods if he had available the scientific knowledge that we are privileged with today.

The Obligation to Avoid Danger

Had the Rambam believed that certain foods or behaviors were dangerous enough to be prohibited by halacha, what mitzvah or prohibition would be violated? The Rambam begins Chapter 11 of Hilchot Rotzeach v'Shemirat Nefesh, the same chapter that lists prohibited foods, with the mitzvah of placing a fence around one’s rooftop in order to prevent people from falling off and being injured or killed. At the end of this discussion, he states:

Similarly, any obstacle which endangers life has a positive commandment to remove it and to safeguard against it very carefully, as it says, “Guard yourself and guard your soul...”¹³ And if one does not remove that which is dangerous, one will have disregarded a positive commandment and transgressed “Do not place blood in your home.”¹⁴ The Sages have forbidden many things because they endanger life, and whoever transgresses them and says, ‘I am going to endanger myself, why

⁶ Ramban ad loc.

⁷ This sentiment is echoed in the Rabbi Moshe Feinstein’s comment at the end of this 1981 responsum on smoking. Although he rules that smoking is not prohibited due to its health risks, he adds that one should still avoid smoking and that there is “still a prohibition to become habitual in smoking and thereby indulge one’s desires and pleasures.” Igrot Moshe, Choshen Mishpat II, no. 76

⁸ Rambam *Hilchot De'ot* 4:15

⁹ Ibid 4:9

¹⁰ Igrot Moshe Choshen Mishpat II no. 76

¹¹ Rambam *Hilchot De'ot* 4:1

¹² *Hilchot Rotzeach v'Shemirat Nefesh*, chapter 11. Technically, even these foods are not forbidden, but rather the circumstances under which they are consumed makes it likely that they contain poison. The consumption of the poison is the root of the prohibition.

¹³ *Devarim* 4:9

¹⁴ Ibid 22:8

should anyone else care about that,' or 'I'm just not careful about that' – we give him lashes for rebelling.¹⁵

Rav Yosef Karo quotes this Rambam verbatim in the last chapter of the entire *Shulchan Aruch*.¹⁶ Rav Karo placed the rest of the Rambam's laws from Chapter 11 of Hilchot Rotzeach in Yoreh De'ah Chapter 116 in the context of other chapters dealing with forbidden eating practices. In Yoreh De'ah, however, he notes that as snakes are now less common, drinking these same uncovered liquids is no longer prohibited as the source of danger has been mitigated. Similarly, he says that eating fish and meat together has become prohibited because it has been determined to pose a threat to human health. Taken together, these two statements demonstrate that certain foods can be permitted or prohibited for health reasons based on the current information of the times in which one is living. Furthermore, at the end of *Yoreh De'ah* 116, Rav Moshe Isserles (Rama) adds that "one should avoid all forms of danger because anything dangerous is treated more stringently than something forbidden by law. And one should be more concerned about a possible danger than a possible prohibition."¹⁷

It is based upon these rulings of the Rambam and *Shulchan Aruch* that many later halachic authorities would source one's obligation to avoid health risks as Devarim 4:15, "*Rak hishamer lechah u'shemor nafshecha* [Only guard yourself and guard your soul]," or the similar Devarim 4:9, "*V'nishmartem m'ode l'nafshoteichem* [And guard your souls exceedingly]." This is despite the fact that in context, clearly neither verse is referring to the obligation to protect one's health, but rather one's obligation to remember the Torah and to avoid idolatry, respectively.¹⁸ In addition to these verses in the fourth chapter of Devarim and to the mitzvah of placing a fence on one's rooftop, other

halachic authorities believe that the obligation to protect one's health can also be based upon the mitzvah to return a lost object, which is based upon the verse "*V'hasheivota lo*."¹⁹ The *Sifrei*²⁰ states that this obligation to restore an item applies even to one's own health and Rav Yehuda Leib Zirelson holds that this obligation applies even before a person becomes injured or ill.²¹ Rav Eliezer Waldenberg in *Responsa Tzitz Eliezer* also rules that there is an obligation to prevent illness based upon the mitzvah of "*V'hasheivota lo*."²²

Shomer Peta'im Hashem and its Limitations

Although there is debate over the exact source that obligates one to avoid danger, there is a general consensus that Jewish law forbids self-endangerment. The difficulty this raises is that life is full of dangers to the point that it is inconceivable that a person could vigilantly follow this halacha without being paralyzed by it. As Rabbi J. David Bleich writes in his article on hazardous medical procedures, "it is universally recognized that life is fraught with danger. Crossing the street, riding in an automobile, or even in a horse drawn-carriage, for that matter, all involve a statistically significant danger. It is, of course, inconceivable that such ordinary activities be denied to man."²³ The answer to this pragmatic difficulty is based the phrase in Tehilim 116:6, "*Shomer Peta'im Hashem*," [Hashem protects the simple]. Based upon this phrase, the Rabbis of the

one is still permitted to engage in risky activities or behaviors if these same actions are common occurrences in our society

¹⁵ *Hilchot Rotzeach v'Shemirat Nefesh* 11:4-5

¹⁶ *Shulchan Aruch, Choshen Mishpat* 427:8-10

¹⁷ Rama, gloss on *Shulchan Aruch, Yoreh De'ah* 116:5

¹⁸ For a discussion of how many commentators have understood and addressed this difficulty, See *Ye Shall Surely Heal* by Rabbi Yaakov Weiner, Ch. 14 and the RJJ article on Preventive Medicine by Dr. DiPoce and Dr. Buchbinder cited above.

¹⁹ *Devarim* 22:2

²⁰ Ad loc.

²¹ *Responsa Atzei HaLevanon*, no. 61. See also *Nishmat Avraham* Vol. II, *Yoreh De'ah* 336:4

²² *Responsa Tzitz Eliezer* Vol. 15, no. 40.

²³ Rabbi J. David Bleich, "Hazardous Medical Procedures," *Tradition* 37:3 76-100. See also *Teshuvot Chelkat Yaakov, Choshen Mishpat* 31 who cites *Shomer Peta'im Hashem* as the reason behind why we are allowed to travel in a car or plane despite knowing that such travel entails a certain amount of risk.

Talmud in Shabbat 129b, Yevamot 12b, Ketubot 39a, and Niddah 31a, allow a person to engage in certain dangerous activities due to the fact that “Since many people have undertaken such activities, *shomer peta'im Hashem* – God will protect the simple.” In later generations, many halachic authorities would apply *shomer peta'im Hashem* to new situations which they believed were analogous to those permitted by the Talmud. Thus, a general principle was derived that although in general one is obligated to avoid danger, one is still permitted to engage in risky activities or behaviors if these same actions are common occurrences in our society. Under such a situation, a person may rely upon the fact that God generally protects people from the “everyday” dangers of life. This reliance upon *shomer peta'im Hashem* is cited by Rabbi Moshe Feinstein in both his responsa in which he permits smoking.²⁴

In theory, it would appear that as long as a dangerous activity is normal behavior in one's society, it should be halachically permitted to follow the masses. As such, if many people smoke, smoking should be permitted, and if many people eat unhealthy diets or dangerous foods, this behavior should be permitted as well. However, many halachic opinions assert that there are rules and limitations to when one can invoke the permission of *shomer peta'im Hashem*.

Rabbi Yacov Ettlinger in *Teshuvot Binyan Tzion* explains that although normally there is a principle that we do not follow the *rov*, majority, when it comes to life saving situations, this is only true for immediate dangers. However, when dealing with a long term danger, we do follow the majority and must evaluate the exact level of risk entailed. As such, if the likelihood of danger for a certain activity is less than 50%, such an activity is permissible. However, if the likelihood of danger is greater than 50%, the activity would be forbidden.²⁵ Thus,

***only rely on shomer
peta'im Hashem when the
risk is “far removed and
occurs in the minority of
minority cases.”***

according to the *Binyan Tzion*, the allowance of *shomer peta'im Hashem* would only apply to situations of risk lower than 50%. A risk greater than 50% is quite a high level of risk, and it is likely that even Rabbi Feinstein would agree to this restriction, as throughout his responsa in 1981 he mentions that he believes that the damage caused by smoking is still a “small minority.”²⁶

Other opinions agree with the *Binyan Tzion*, but without placing the 50% guideline. Rabbi Chaim Ozer Grodzinsky states explicitly that we only rely on *shomer peta'im Hashem* when the risk is “far removed and occurs in the minority of minority cases.”²⁷ Rav Ovadia Yosef writes similarly in *Yabia Omer* that *shomer peta'im Hashem* only applies when the potential risk is in the minority but not to a likely or certain risk.²⁸ Finally, the Chatam Sofer writes that *shomer peta'im Hashem* only applies when one is unaware that their actions are causing danger or risk, but if the danger is known, then one will not be protected.²⁹

Perhaps most important to note when evaluating health risk is that some halachic authorities, such as Rabbi Chaim Ozer Grodzinsky, specifically contrast dangers recognized by doctors with “minor risks” that are covered by *shomer peta'im Hashem*. As such, medical opinion is viewed as reliable source for evaluating which risks are significant enough to no longer be permitted based upon *shomer peta'im Hashem*. The *Avnei Nezer* states that one may only rely on *shomer peta'im Hashem* regarding the constant dangers of life, but not in a situation where the doctors say that a certain action will put life in danger.³⁰

²⁶ Igrot Moshe Choshen Mishpat II no. 76

²⁷ Teshuvot Achiezer Vol. 1 no. 23

²⁸ Yabia Omer Volume 6 Yoreh De'ah no. 13 and Volume 3 Yoreh De'ah no. 7

²⁹ Teshuvot Chatam Sofer Volume 1 Orach Chaim no. 196.

³⁰ Teshuvot Avnei Nezer, Even Ha-Ezer no. 1. Note, however, that the *Avnei Nezer* is different in that he is not contrasting doctor's opinions with low level risks, but doctor's opinions with common risks. Perhaps he would consider smoking or diet related dangers as

²⁴ Igrot Moshe Yoreh De'ah II no. 49 and Choshen Mishpat II no. 76

²⁵ Teshuvot Binyan Tzion no. 137

Others hold that the Talmud only permitted one to rely on *shomer peta'im Hashem* and undertake dangerous activities for a mitzvah or pressing matter, but not for recreational or unnecessary activities.³¹

The Smoking Debate and the Advancement of Medical Data

As mentioned above, it is primarily based upon the allowance of *shomer peta'im Hashem* that Rabbi Moshe Feinstein ruled that smoking was not officially prohibited by halacha in 1964 and again in 1981.³² In the 1981 responsum, Rabbi Feinstein specifically makes mention that the “damage to health caused by smoking is a small minority [of cases].”

As medical evidence increased in the last two decades of the 20th century regarding the severity of the detrimental effects of smoking, however, many other halachic authorities have chosen to rule that smoking is indeed prohibited by the Torah. The crux of their arguments was not that they disagreed with the concept of *shomer peta'im*

Hashem, but rather that it now became apparent that the level of danger caused by smoking is clearly above the level permitted by *shomer peta'im Hashem*. By 1982, Rabbi Eliezer Waldenberg was already convinced that smoking was dangerous enough to be forbidden.³³ Rabbi Avigdor Nebenzahl wrote in 1986 that one cannot rely upon *shomer peta'im Hashem* when we clearly see that God is *not* protecting smokers from harm.³⁴ This change in thinking is most clearly seen in the halachic rulings of Rav Ovadia Yosef. Although Rav Ovadia Yosef rules similar to Rabbi Feinstein in 1983,³⁵ he later reversed his opinion in a ruling published in 1998.³⁶

Researchers believe that poor diet and physical inactivity may soon overtake tobacco as the leading cause of death

The fact that medical evidence along with societal consensus about the dangers of smoking had reached a new climax in the 1980s and 1990s is also evident from the secular legislation passed around the turn of the century. The state of California enacted its first smoking ban of all enclosed workplaces in 1994, and later included bars in 1998.³⁷ The success of the ban influenced other states, such as New York, to enact their own smoking bans. By 2009, 37 states now have some form of smoking ban.³⁸ Many other countries enacted their own anti-smoking legislation as well during this same period.

This societal recognition also played a role in Rabbinic rulings as well. In 1998, Rabbi Efraim Greenblatt published a responsum in which he ardently states that smoking is not only prohibited

common risks if they were considered normal everyday behavior in one's society.

³¹ Binyan Tzion cited above holds this way. See also Rabbi Shlomo Cohen-Duras, “Shomer Peta'im Hashem,” *Techumin* 24: 228-34 who discusses other sources that demonstrate that *shomer peta'im Hashem* only applies for a mitzvah or for a pressing need. He also presents opinions who hold that this the Talmud only applies this principle to supernatural dangers, but not to natural risks even for a mitzvah. Furthermore, many of the responsa already cited deal with situations where a mitzvah is involved such as having children. Although not all opinions say so explicitly, it is likely that these halachic authorities would be less inclined to allow even minor risk taking if it is not for a necessary purpose or mitzvah. Rabbi Cohen-Duras also notes that there is one opinion, Rabbi Yehuda Assad, who appears to hold that *shomer peta'im Hashem* applies even to cases of known and certain danger, although he as well is discussing a case involving the mitzvah of having children.

³² *Iggrot Moshe Yoreh De'ah* II no. 49 and *Choshen Mishpat* II no. 76. There is a commonly assumed reading of Rabbi Feinstein's 1981 responsum that assumes that while still holding that smoking is permitted for those who already smoke, he forbids non-smokers to start smoking. A careful reading, however, reveals that he only says it is “worthy” for one not to smoke, or “one *should not* become addicted.” The only time Rabbi Feinstein uses the *assur*, prohibited, is when he states, “And aside from the concerns of danger involved, it should be prohibited to become habitual [in smoking] for one should certainly not cause himself to be drawn towards increasing his desires and pleasures.” This comment seems less judicial in nature, and more of an ethical comment, similar to the Ramban's concept of *naval b'reshut haTorah*.

³³ *Teshuvot Tzitz Eliezer* Volume 15 no. 39

³⁴ *Asyah* Volume 5, p. 261

³⁵ *Teshuvot Yechave Da'at* Volume 5 no. 39

³⁶ *Sefer Halichot Olam* 1:265-66.

³⁷ California Labor Code §6404.5 Retrieved on August 18, 2009 at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=06001-07000&file=6400-6413.5>

³⁸ “How many Smoke Free Laws?” American Nonsmokers' Rights Foundation. Retrieved on August 18, 2009 at <http://www.no-smoke.org/pdf/mediaordlist.pdf>

but outright suicide. He compares the use of *shomer peta'im Hashem* to permit smoking to someone lying down in the middle of the highway, assuming that God will protect him. In addition, Rabbi Greenblatt specifically notes that smoking is already prohibited in many public establishments, even in businesses that serve alcohol – thus demonstrating that smoking is viewed as even more dangerous than alcohol.³⁹

Finally, in 2006, the Rabbinical Council of America issued a ruling by their Va'ad halacha not only stating that they firmly believe smoking is prohibited, but also declaring that “given the increased knowledge and awareness of the health risks of smoking, it is safe to assume that even Rav Moshe zatzal would have agreed that it is forbidden.”⁴⁰

one would not be allowed to rely on shomer peta'im Hashem in the case of negligent obesity

Obesity and Trans Fat – the New Smoking?

Although smoking remains the number one preventable cause of death in the United States, other health risk factors are increasing drawing the attention of the medical community. While tobacco accounted for 18.1% of total U.S. deaths in 2000, obesity accounted for 15.2% of total

U.S. deaths. Researchers believe that poor diet and physical inactivity may soon overtake tobacco as the leading cause of death.⁴¹ As such, perhaps halachic authorities and Jewish communities should begin evaluating whether an unhealthy diet or certain unhealthy foods may be forbidden by halacha. The comparison of smoking to unhealthy

food intake should not be considered a novel idea. Rabbi Feinstein's 1981 responsum makes this same comparison (in the opposite direction) as a support for his belief that smoking is not prohibited by halacha. After citing the Rambam's warnings in Hilchot De'ot against overeating or eating unhealthy foods, Rabbi Feinstein writes that “smoking cigarettes is comparable to these matters.”⁴² In the same way that new medical evidence has led nearly all modern halachic authorities to prohibit smoking, it is entirely plausible for medical evidence regarding the dangers of obesity or dangerous substances, such as trans-fat, to inspire similar modern halachic rulings. If the Rabbinical Council of America believes that Rabbi Moshe Feinstein would have changed his opinion regarding smoking due to changes in medical knowledge over the course of two decades, is it possible that the Rambam would have changed his opinion⁴³ about overeating or eating dangerous foods due to medical knowledge accumulated over the past 800 years?

Obesity – Current Evidence

Is obesity really as bad as smoking? To give a global perspective in terms of what preventable risk factors lead to death – after smoking (18.1%) and obesity (15.2%), the next highest cause of death is alcohol consumption, which accounted for only 3.5% of the total U.S. deaths in 2000.⁴⁴ Obesity increases one's risk of morbidity from high blood pressure, high cholesterol, Type 2 diabetes, coronary heart disease, stroke, gallbladder disease, osteoarthritis, sleep apnea and respiratory problems, and endometrial, breast, prostate, and colon cancer. Higher body weight is also associated with increases in all-cause mortality. Currently, obesity has reached epidemic levels and is especially problematic in developed countries. As

³⁹ Teshuvot Rivevot Efraim 8:586. Rabbi Greenblatt was also one of the most prominent students of Rabbi Moshe Feinstein.

⁴⁰ The Prohibition of Smoking in halacha. Retrieved on August 18, 2009 at http://www.rabbis.org/pdfs/Prohibition_Smoking.pdf

⁴¹ Mokdad et al., “Actual Causes of Death in the United States, 2000,” *Journal of the American Medical Association* 291(10): 1238-45. See also Mokdad, et al., “Correction: actual causes of death in the United States, 2000,” *Journal of the American Medical Association* 293(3): 293-4.

⁴² Iggrot Moshe Choshen Mishpat II no. 76

⁴³ i.e the Rambam's choice to list these health risks in Hilchot De'ot as strong recommendation, instead of in Hilchot Rotzeach as formal prohibitions.

⁴⁴ Mokdad et al., “Actual Causes of Death in the United States, 2000,” *Journal of the American Medical Association* 291(10): 1238-45.

people vary greatly in height, defining obesity purely based on weight alone is ineffective; instead, the convention of Body Mass Index (BMI) is nearly universally used.⁴⁵ Body mass index is defined as a person's weight in kilograms divides by their height in meters squared. Overweight is commonly defined as a BMI of 25 to 29.9 kg/m² and obesity as a BMI above 30 kg/m².⁴⁶ For example, a 5'8" person would be considered overweight at 165 lbs and obese at 195 lbs. Currently, one third of U.S. adults are overweight and an additional third are obese.⁴⁷ As a significant majority of the population is overweight, it is certainly tenable to say that one is protected by *shomer peta'im Hashem* being that so many people are engaged in the same behavior.

However, as mentioned above in the discussion about the limitations of *shomer peta'im Hashem*, there are also numerous reasons to say that one would not be allowed to rely on *shomer peta'im Hashem* in the case of *negligent* obesity.⁴⁸ Firstly, the risks of obesity are known and recognized by doctors across the world. Some of the leading health national organizations, such as the National Institutes of Health and the American Heart Association, have produced pamphlets to educate people about the dangers of obesity and guidelines for physicians on how to treat obese patients.

Secondly, according to many research studies, the risks associated with obesity may not be considered a "minority" risk or one that is "far removed and occurs in the minority of minority

the prohibition would be on the behavior, on the act of eating irresponsible, not on the state of being overweight or obese

cases." One's risk of diabetes increases 25 percent for each additional unit of BMI over 22. This would mean that compared to someone of average weight, an overweight person has almost twice the risk and an obese person has more than three times the risk. 27 percent of new cases of diabetes are attributable to weight gain in adulthood of approximately 11 lbs or more. With regard to coronary heart disease (CHD), weight gains of around 15 lbs increase one risk of nonfatal heart attack or death by 25 percent, and weight gains of 44 lbs increase risk more than 2.5 times. One British study showed that for every unit increase in BMI, risk of CHD increases by 10 percent. Risk of stroke has been shown in women to be 75 percent higher at BMI of 27 and 137 percent higher with a BMI over 32. Women with a BMI over 29 had were shown to have twice the incidence of colon cancer as women with a BMI of 21 or less. Overall, persons with a BMI of 30 or more (obese) were twice as likely to die from all causes as persons with BMI in the 20-25 range.⁴⁹ Although these values of risk may or may not reach the Binyan Zion's 50% level of risk required to declare *shomer peta'im Hashem* inapplicable (50% or even 100% increased risk is not the same as saying that 50% of people will be injured or killed), these statistics are certainly comparable to those cited in the Rabbinical Council of America's assessment of the risks from smoking.⁵⁰

⁴⁵ Although many institutional guidelines translate these values back into approximate weight gain ranges for the convenience of use by patients and physicians.

⁴⁶ National Institutes of Health. "Clinical Guidelines on the Identification, Evaluation, and Treatment of Overweight and Obesity in Adults." Retrived on 8/5/09 at http://www.nhlbi.nih.gov/guidelines/obesity/ob_gdlns.pdf.

⁴⁷ Lichtenstein et al. "Diet and Lifestyle Recommendations Revision 2006: A Scientific Statement from the American Heart Association Nutrition Committee," *Circulation: Journal of the American Heart Association* 2006; 114; 82-96.

⁴⁸ As there may be a genetic component to an individual's obesity, the prohibition being discussed would be regarding eating behaviors leading to obesity, regardless of the person's actual BMI, or weight.

⁴⁹ National Institutes of Health. "Clinical Guidelines on the Identification, Evaluation, and Treatment of Overweight and Obesity in Adults." Retrived on August 5, 2009 at http://www.nhlbi.nih.gov/guidelines/obesity/ob_gdlns.pdf

⁵⁰ The Prohibition of Smoking in halacha. Retrieved on August 18, 2009 at http://www.rabbis.org/pdfs/Prohibition_Smoking.pdf. In footnote 16 of the RCA's responsum, they cite the following statistics from various medical sources: "Cigarette smokers are 2-4 times more likely to develop coronary (heart) disease than non smokers. Cigarette smoking approximately doubles a person's risk for stroke...it is estimated that 15% of smokers die of lung cancer. Accordingly, this would indicate a mortality of 50% or more from all tobacco related causes." It is unclear how the RCA reached their final calculation of a 50% mortality rate, the actual statistics cited are comparable to those increases risks assumed by obese persons (BMI over 30). Furthermore, in general, statistics regarding smoking are cited without detailing how heavy the level of smoking is being studied. Smoking one pack a day obviously entailed

The major caveat with comparing overeating to smoking halachically is that, in general, food is an essential and necessary part of life. It may prove hard to declare one bite of food as necessary and the next as “prohibited.” Smoking, on the other hand, is purely voluntary and recreational in nature, to the point that perhaps some halachic authorities would never say it is protected by *shomer peta'im Hashem* even if the health risks were not as high as currently estimated. Thus, although smoking one cigarette a year technically may not bear a significant risk, it may still be prohibited due to its lacking in any positive value in the eyes of halacha. Furthermore, one must acknowledge the strong role that genetics plays in obesity (as one should with regard to addiction) – some people are more susceptible to the effects of their dietary intake than are others. As such, if one is willing to consider the possibility that dietary intake can be a halachic matter – the prohibition would be on the behavior, on the act of eating irresponsibly, not on the state of being overweight or obese.⁵¹

Trans Fat

As the above caveats may make it more difficult to consider overeating a violation of halacha, declaring certain very unhealthy food substances as halachically forbidden may be more on par with smoking. Perhaps the best modern test case is Trans-Fatty Acids, or “Trans-Fat.”

Trans-fats are produced commercially in the making of shortening and margarine. The word

***trans fat
consumption
has become,
the new
“smoking”
of the 21st
Century***

“trans” refers to the molecular structure, a specific feature which causes them to remain solid at room temperature allowing food products which contain them to appear more desirable and to have a longer shelf life. They are commonly used in commercially baked products, fast foods, packaged snack food, and crackers. The most common household source is stick margarine. Currently in the United States, the average person’s trans-fat intake is about two to three percent of their total calories.⁵²

Although trans-fat is not associated with as many illnesses as general obesity, it became a popular topic in nutritional discussions in the 1990s when research made it clear that it is associated with an increased risk of coronary heart disease. Much like saturated fat, which people are more familiar with, trans-fat increases a person’s LDL cholesterol (“bad” cholesterol). What makes trans-fat particularly dangerous, however is that it also decreases a person’s HDL cholesterol (“good” cholesterol), so that the net effect of trans-fat on the ratio of bad to good cholesterol is approximately double that of saturated fat.⁵³ This ratio is especially significant in that cholesterol levels are a much more significant factor in CHD death than even smoking, BMI, or physical activity.⁵⁴ Current research has also shown that trans-fats may also impact cardiovascular health in other ways such as by producing inflammation.⁵⁵

In some studies, persons with the highest level of trans-fat intake in their diets had 2.4 times the risk of having an acute heart attack as compared to those with the lowest intakes. Two major studies found that even a two percent increase in the intake of trans-fats was associated with a significant

significantly more risk than one cigarette a day. Many statistics are probably reporting morbidity or mortality for heavy smokers. Similar statistical manipulation can be made with regard to obesity which is why specifying the level of obesity is important. For example, “Morbid Obesity” – BMI 40 or above – is associated with 6-12 times!! the mortality of normal middle age individuals. See Rashid et al., “Obesity and the Risk for Cardiovascular Disease,” *Preventive Cardiology* 2003; 6:42-47.

⁵¹ Accordingly, an obese person who tries to control their weight, but it unsuccessful due to their genetic predisposition, would not be in violation of halacha, while another individual with the same BMI could be in violation if he or she chooses to retain unhealthy eating habits.

⁵² Mozaffarian et al. “Trans Fatty Acids and Cardiovascular Disease,” *New England Journal of Medicine* 354 (15): 1601-1613. Naturally occurring trans fat are also found in small quantities in meats and dairy products.

⁵³ Ibid. See also Lichtenstein et al. “Effects of different forms of Dietary Hydrogenated Fats on Serum Lipoprotein Cholesterol Levels,” *New England Journal of Medicine* 340 (25): 1933-1940.

⁵⁴ Menotti et al. “Inter-Cohort Differences in Coronary Heart Disease Mortality in the 25-year follow up of the Seven Countries Study,” *European Journal of Epidemiology* 9: 527-536.

⁵⁵ Mozaffarian et al. “Trans Fatty Acids and Cardiovascular Disease,” *New England Journal of Medicine* 354 (15): 1601-1613.

increased risk of CHD.⁵⁶ One study found that simply replacing two percent of one's dietary intake with other fats instead of trans-fats caused a 53 percent decrease in risk and replacing two percent with carbohydrates decreased risk by 93%.⁵⁷ Accordingly, a review article in the *New England Journal of Medicine* already noted in 1999 that this would mean that the average person's intake of two percent of calories from trans-fat in the United States "would be predicted to account for a *substantial* number of deaths from coronary heart disease."⁵⁸

As of 2006, the Food and Drug Administration (FDA) required that all conventional foods indicate their content of trans-fat on the label. Later studies reported that the increased risk for coronary heart disease may be closer to 25%, but there is also an increased risk of cardiac related sudden death in the range of 47% to almost 300%. In 2006, the *New England Journal of Medicine* estimated that 10-19 percent of CHD events in the U.S. could be prevented by reducing trans-fats.⁵⁹

Thus, in many ways trans-fat contains the same halachic concerns that caused smoking to be

prohibit overeating, perhaps certain recognized dangerous foods, such as trans-fats, should be officially forbidden (at least above some minimal quantity)

prohibited. The health risks of trans-fat consumption are significant, known, and recognized by doctors internationally. Also, although trans-fat does provide energy, it essentially adds no nutritional benefit to foods⁶⁰, and in this respect is quite comparable to smoking. Finally, the dangers of trans-fat are becoming apparent in the eyes of government and society as a whole. In 2006, New York City's Board of Health voted to ban trans-fats from use in restaurant food.⁶¹ The city of Philadelphia passed a similar ban, and many other cities across the United States are working on legislation. In 2008, California became the first state to ban trans-fat in restaurants, a ban which becomes effective in 2010.⁶² This societal change is reminiscent of Rabbi Efraim Greenblatt's responsum prohibiting smoking, where he noted that it is banned even in restaurants where alcohol is served. Although the bans on trans-fats are nowhere nearly as widespread as the bans on smoking, this shift in societal awareness highlights how well recognized the risk of trans-fat consumption has become, and how it is slowly becoming the new "smoking" of the 21st Century.

Conclusion

In Jewish communities that respect both halacha and modern science, the idea of prohibiting a food or substance based upon changes in medical information is not a new concept. For much of the 20th century, smoking was the *raison d'être* of both preventive medicine and modern halachic discussion. While the medical and halachic battle against smoking is unfortunately not a closed case, there are other newer concerns

⁵⁶ Ascherio et al. "Trans Fatty Acids and Coronary Heart Disease," *New England Journal of Medicine* 340 (25): 1994-1998. See also Kromhout et al. "Dietary Saturated and trans Fatty Acids and Cholesterol and 25-Year Mortality from Coronary Heart Disease: The Seven Countries Study," *Preventive Medicine* 24: 308-315.

⁵⁷ Hu et al. "Dietary Fat Intake and the Risk of Coronary Heart Disease in Women," *New England Journal of Medicine* 337 (21): 1491-1499. This same study also noted that replacing 5 percent of one's calories from saturated fat with unsaturated fat would reduce their risk of CHD by 42 percent. The authors also noted that reducing this amount of saturated fat is actually much more feasible than reducing 2 percent of trans fat. In this regard, perhaps saturated fat would also have proven an interesting test case for halacha. However, saturated fat is still considered a more acceptable part of one's diet. The American Heart Association recommends that saturated fat intakes be less than 7% of ones diet, but trans fat should be less than 1%. See *Circulation: Journal of the American Heart Association* 2006; 114; 82-96 cited above.

⁵⁸ Ascherio et al. "Trans Fatty Acids and Coronary Heart Disease," *New England Journal of Medicine* 340 (25): 1994-1998. Italics added.

⁵⁹ Mozaffarian et al. "Trans Fatty Acids and Cardiovascular Disease," *New England Journal of Medicine* 354 (15): 1601-1613. According to this review article, one study showed a 39% increased risk for diabetes.

⁶⁰ Ascherio et al. "Trans Fatty Acids and Coronary Heart Disease," *New England Journal of Medicine* 340 (25): 1994-1998.

⁶¹ "New York City passes Trans Fat Ban," *MSNBC.com*. December 5, 2006. Retrieved on 8/23/09 at <http://www.msnbc.msn.com/id/16051436/>

⁶² McGreevy, Patrick, "Gov. Schwarzenegger signs law banning trans fats in restaurants," *Los Angeles Times*. July 25, 2008. Retrieved 8/23/09 at <http://articles.latimes.com/2008/jul/26/local/me-transfat26>

in the 21st century, which also deserve the attention of the medical and halachic community. For the past two decades, the discussions about the health risks caused by obesity in general and trans-fat in particular have intensified in the medical community. Even local and state governments have started to mobilize against these health concerns. Perhaps is it time for halachic authorities, local Rabbis and synagogues to start considering whether action should be taken on the part of Jewish communities. Perhaps *behavior* leading to obesity should start being viewed not only as irresponsible, but also as a violation of halacha. Furthermore, even if Rabbis find it too difficult to actually prohibit overeating, perhaps certain recognized dangerous foods, such as trans-fats, should be officially forbidden (at least above some minimal quantity).

Even if one does not feel that the evidence at the moment is strong enough to make any formal prohibitions, local communities should consider

whether such significant health risks should be supported publicly. As the Rama writes in *Yoreh De'ah* 116:5, “we treat danger even more strictly than forbidden behaviors.” Perhaps synagogues should ask their caterers to reduce or refrain from using trans-fat in their products. Perhaps baked products at *kiddushes* should be encouraged to be free from trans-fat. This approach would not mean that one could never indulge in another donut or cookie, but simply that as a community that values Torah, halacha, and life, health consciousness should also take precedence at certain times and places.

Finally, recently the idea of an “ethical *hechsher* (kosher supervision)” has grown in popularity in some Jewish circles. Perhaps such *hechshers* should require that the companies or products that they oversee are stringent about the health consequences to those who eat their products in addition to the health of the workers who make the products.

Therapeutic Bathing in Rabbinic Literature: Halachic Issues and their Background in History and Realia

Avraham Ofir Shemesh

Therapeutic bathing has been in vogue since antiquity. In the course of the generations, the therapeutic characteristics of various springs, lakes, and other mineral waters have been established, leading to their use in a variety of diseases. General

historical sources, just like Jewish sources from the Talmudic and post-Talmudic periods, mention the use of therapeutic springs and baths in various locations.¹

¹ Medical use of health springs in Israel has been discussed in various scholarly forums. For example, see A.S. Hirschberg, “Mekomot ha-Marpe be-Erets Yisrael,” in *Ha-Tekufa* 6 (5680), pp 242-244; M. Buchmann, “Mi-Toldot Hammei Teverya,” in *Erets Kineret* (publ.:

WZO, Jerusalem, 5711), pp 157-166; S. Twig, “Merhatsot marpe be-Yisrael,” in *Kardom* 1, 6 (1979), pp. 27-28; Y. Hirschfeld, “ha-Merhatsot ha-Romiyyim,” in *Derech Erets* (Tel Aviv, 5743), pp. 209-213; Y. Hirschfeld, “Mekom Mayim Yafim,” in *Sekira Historit Archiologit, Ariel* 55-56 (1988), pp. 9-30; E. Yekutieli-Cohen, *Perakim mi-Toldot Hammei Teverya, Mi-Tuv Teverya* 6 (5748), pp. 22-27. On health spas in other parts of the world, see references *infra*.