Brit Milah and the Specter of AIDS

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One of the more frightening aspects of modern life is the specter of the AIDS epidemic, which has swept across continents like a whirlwind, bringing death and hysteria in its wake. At first considered an affliction which threatened only the fringes of society, AIDS has now come into its own as a threat to even the most clean-living and innocent persons. Retroactively, hospital patients who thought their lives had been saved by an emergency blood transfusion, or hemophiliacs who received blood treatments, or even nurses, doctors, and dentists have found out to their horror that not only have they become victims of the disease, but in addition, as carriers, they have unknowingly infected other innocent persons, family members, or friends.

No one, we are cautioned, can feel smugly secure that he or she is not at risk, that AIDS is of no concern. Consequently, we must re-examine some of our most common practices and consider whether modifications ought to be made, either as a precaution to stem the spread of AIDS or even as a measure of self-protection.¹ This is a particularly cogent question with reference to the

¹ In recent years, it has become common practice in most mikvahs to place chlorine pellets in the water, to remove the danger of contracting AIDS or other communicable diseases.

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performance of the Brit Milah, which is an almost universal practice among Jews. As we shall see, some of the halachic procedures attendant upon the Brit may harbor tremendous dangers not only for the baby or the Mohel at any particular Brit, but even for the entire Jewish community.

This study will examine the possible dangers and the halachic questions which need to be addressed in order to find resolution for what may prove to be a dilemma of epic proportions.

Although we are all familiar with the requirement of the Torah that all Jewish males receive a Brit, we should not confuse this with the procedure loosely termed a "circumcision", or removal of the foreskin. Actually, "Brit", according to the halacha, is a more extensive procedure. The Mishnah in Shabbat 133a rules

On the Sabbath, we (must) perform all the requirements of Milah: circumcision, Priah, and Metzitza.

Thus, Jewish law apparently recognizes three parts to the Brit Milah — removal of the foreskin; Priah which is tearing of the mucous membrane which lies under the foreskin, and metzitza, or "sucking out" the blood from the wound, for the purpose of cleansing the area and removing germs which might harm the infant.²

The traditional method of Metzitza was — and is — accomplished by "metzitza be'peh" whereby the mohel places his mouth over the wound and sucks out some blood. In light of the medical reality that one of the primary methods for transmitting the AIDS virus is by "exchange of body fluids," particularly blood, there is great concern whether this metzitza be'peh is advisable or even permissible in our day and age.³ Simply put, a Mohel performs

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² The Gemara considers the infants to be in mortal danger unless the blood is drawn out. For a more precise definition of this danger, see the sources cited in the text.

³ AIDS is still a disease about which not enough is known. In an article in The New York Times on Friday, May 6, 1988, it was reported that preliminary research indicates that "Human saliva contains substances which prevent" the AIDS virus from infecting white blood cells. Whether further tests will demonstrate that saliva is an effective barrier remains to be shown.
dozens, maybe hundreds of milahs a year, often upon children whose families he does not know at all. What if the father or mother of the baby had the AIDS infection, even for the most innocent of reasons, and the child was born harboring the virus? Potentially there may be great danger that the Mohel may get infected. Is the Mohel required to place himself in mortal danger? How integral a part of milah is metzitza, particularly metzitza be’peh? Or let us approach the matter from the other direction — what if the Mohel is or, unbeknownst to himself, becomes a carrier of the virus? He could become another “Typhoid Mary”, spreading the disease to hundreds of victims, unaware of what is happening. Are the parents obligated under Jewish law to place their son in such danger?

In order to answer these questions, we shall have to analyze a number of issues:

1) What is the role which metzita plays in the brit milah? Is it a therapeutic measure, essential for assuring proper healing? Or is it an integral part of the milah itself?
2) How essential is metzita specifically by mouth to satisfy the halachic fulfillment of the mitzvah of brit milah?
3) Can or should the element of pikuach nefesh (mortal danger) obviate the requirement for metzitza be’peh?
4) To what extent does medical opinion influence halachic decisions?
5) Metzitza be’peh has been performed at all brit milahs for thousands of years. Is it permissible to relinquish a minhag? What is the power of a minhag?

In addressing these very serious questions, we are fortunate that we do not have to start de novo, for it is a topic which was at the center of a great deal of conflict and controversy during the nineteenth century, and there is an extensive body of halachic
literature devoted to analysis of the question. A major assault was undertaken by various Reform spokesmen in Germany during the course of the last century, attacking circumcision altogether as a vestigial barbaric ritual, an unworthy and unhealthy practice for people who considered themselves enlightened and rational. There were Reform “rabbis” and laymen who challenged the right of the Jewish Gemeinde (community organization) to force its members to circumcise their sons as a pre-condition for registering them as Jews. Even among those who did not seek to abolish circumcision entirely, there was nevertheless a widespread sentiment that metzitza — and certainly be’peh!! — was a disgusting, unsanitary, and totally unacceptable practice.

Consequently, many halachic authorities responded to the attacks on brit milah, in an effort to clarify and protect the traditional practices. But underlying all their careful analysis and explication is the awareness that, fundamentally, the “reformers” were mounting an attack on millenia of Jewish tradition in an attempt to break down the authority of Torah and tradition and replace it with their own concepts of a universal religion of “enlightened humanism.” To their credit, the rabbis did not descend to the level of polemic and invective which was leveled at them, but chose to respond to the calumnies voiced against milah with reasoned arguments and careful explanation of the basis for the traditional practice.

The Maharam Schick took an active part in the controversy, for by the time he was writing he saw that the assault on brit milah was more than just an endeavor to improve the welfare of Jewish infants. He clearly understood that the true impetus for all the polemics was a challenge to the authority of the rabbis and, even more, a challenge to the supremacy of halacha, to the belief of Torah miShamayim (the Torah as being a Divine instrument). In his rulings he forbade a mohel from participating in a brit milah

4. 236-281 '112-632. For a brief review of all the opinions, see ספר הבירה רח קפ"ח.
which did not include *metzitza be’peh*. Moreover, he goes so far as to argue that possibly *metzitza be’peh* is on the level of "halacha leMoshe miSinai" — i.e., an express oral tradition dating back to Moshe Rabbeinu — in which case, even if it could be argued that "Nature has changed", no change in the tradition could be countenanced.

Furthermore, precisely because the challenge to traditional *brit milah* was perceived as an attack on the very heart of Judaism, he forbade even the slightest deviation from age-old practice. Because today they tell him to do this, and tomorrow they will tell him to do that — and therefore he is obligated to give his life [to uphold the principle that the laws of the Torah are inviolate]." In *Sanhedrin* 74 the Gemara teaches that when there is a general attack on Judaism, one must choose death rather than accept even so minor a change as modification of the traditional type of laces Jews used in their shoes. Maharam Schick considered the contemporary situation comparable in severity, and insisted that it is forbidden to budge an iota from previous tradition.

It is perhaps difficult to rely upon this aspect of the Maharam Schick’s written response as a precedent in our own situation, for surely the current suggestion that some modification be introduced in *metzitza* is not coming at all from the camp of the irreligious or the anti-religious. Indeed, few but the most meticulous Jews are familiar with the practice of *metzitza be’peh*. Rather, rabbinic scholars and Orthodox medical professionals are raising the suggestion, and their sincere concern for the physical welfare of the Jewish community is not being seriously impugned. Fortunately,

5. Said *Chatam Sofer*.
6. He does not define how one determines what is a "halacha leMoshe miSinai".
7. As a student of the *Chatam Sofer*, Maharam Schick felt compelled to respond to a letter of the *Chatam Sofer* which had been published, declaring that *metzitza* is not an essential part of the *Brit* and, if necessary, could be omitted. Maharam Schick writes that the letter was only discussing a case of מֶחֶס נֵזֶעַ, and was a case of the lesser of two evils, from which no precedent could be drawn.
most of the rabbis who defended brit practices a century ago chose to buttress their opinion with careful and erudite halachic analyses of the purpose, importance, and rationale of metzitzat be’peh. Their opinions are highly relevant to the present discussion.

The first point which needs to be clarified is the proper characterization of metzitzat: what is its function? Usually, metzitzat is seen as a measure instituted to assure the health and safety of the infant. Such is the view of R. Yaakov Ettlinger relying on the Rambam.9

אוחיך מוצץ את הימין עליו יעיין וידמוך מהדים והדחים
כרי שלם ובא לזרך סכנה

And afterwards, he [the mohel] sucks the milah until blood comes out [even] from the distant parts, so that [the child] will not be in any danger...

Following this reasoning, Rav Ettlinger refuses to sanction elimination of metzitzat be’peh, which he concludes is the best way to draw blood even from the distant vessels.10 His defense of metzitzat be’peh was actually a counterattack on those who wanted to do away with the practice, which he maintained was an important safety measure.

Many rabbis contend that metzitzat is a procedure mandated by the Gemara as a critical step in insuring the cleanliness and promoting the healing of the incision. For that reason, the Gemara insisted that it be performed even on Shabbat (as pikuach nefesh), and instructed that any mohel who neglected this step was to be removed from his position.11

أمור רב פמי הודא אומנה דלא מיין סכנה והא עבירהו ליה
משיעת מודך מהלבלעליה שבחא סכנה היה מוה רחימא...

8. ש”י. ח. ע: ב. ב. 9. הלהדות מילא מרק ב הלכה ב.
10. But see סמר החברית דף ה”י והרי, which cites the opinion of the Radvaz, who had a different understanding of this passage in the Rambam.
11. שבת כלות.
However, reluctance to countenance any changes in the *metzitza* by mouth may arise from a different conception of that procedure: while it is true that it surely has a therapeutic purpose, there are some scholars who claim that *metzitza* is an integral part of the *brit milah* itself, not only an aid to healing. They interpret *metzitza* as fulfilling the obligation of "*hatafat dam brit*", "letting the blood" for the purpose of establishing the covenant between G-d and the Jew.¹² This second interpretation arises from the somewhat ambiguous text of the Mishnah.¹³

On Shabbat, we do all that is necessary for the *Milah* — we circumcise, we do *per'iah*, we suck out the blood, and we bandage the wound.

The question is where *metzitza* belongs in this list — is it part of the first group — the *milah* and *periah*, which are certainly the essence of the mitzvah, or does it go with the bandages, which are clearly only necessary aids to maintain the infant's health?

Already in the days of the *Rishonim*, this question was taken up. The Ran¹⁴ conjectures that were the *metzitza* only for medicinal purposes, the Mishnah would have termed it "*refuah*" (healing), rather than "*tzorchai milah*", i.e. one of the necessities of the *milah*. Obviously, resolution of this question is a major factor in determining whether modifications can be made in the *metzitza* process. If it is part of the *milah*, we have to follow exactly the criteria for correct *milah*; but if it was instituted to promote healing, and there are better or less dangerous methods available to promote healing, serious consideration ought

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¹². Shitah Mekorim, Shemesh, Sefer Keli

to be given to these alternatives. Rav Asad, in his commentary on Shulchan Aruch, points out a number of practical halachic differences which would arise from the latter reading of the Mishnah.

Nishtanah Hateva?

The nineteenth-century rabbinic defenders of milah also approached the subject from a different vantage: Let us assume that metzitza is not actually part of the brit itself but was instituted by the Gemara as an essential life-saving procedure. In that case, if one could demonstrate that lack of metzitza does not pose a mortal threat to the infant, it might be possible to make some change. That is not to say that the Gemara was mistaken when it declared metzitza vital. However, we do occasionally find our Sages concluding that "nishtanah hateva" "Nature [of things or of people] has changed." When our own experiences directly negate an observed phenomenon in the Gemara, we are forced to conclude that the realities which they confronted were not the same as those we experience. Thus, we may posit that evidently things are not the same as they used to be.

Perhaps it would be possible to argue that albeit in talmudic times there was a danger to the child if metzitza were not performed by mouth, nowadays the medical reality is such that absence of metzitza be'peh does not pose a threat to the child's wellbeing. Such an argument need not be rejected on religious or procedural grounds, for eminent halachic authorities have employed a similar rationale for explaining other changes in Jewish law.

For example, the Gemara is of the opinion that a baby born in the eighth month is not a viable child; technically, one does not violate the Sabbath to save such a child's life, since he cannot live anyway. But, as the Ramo noted some four centuries ago,

Many wonder at this [teaching of the Talmud that an eighth-month baby cannot live], for experience denies

15. יִיְ disjoint.
16. שבת קְלָלְתָה.
17. ראַּו, אַבּוּ זַעַּר כְּנַיָּי.
[the validity for their teaching]; therefore, we must say that nowadays there has been a change in this matter, and so in a number of situations. (italics added)

This was also the reasoning of Rav Yosef Karo, author of the Shulchan Aruch, in discussing another of the procedures of brit milah. It used to be the practice to wash the baby with warm water, both before and after the brit. So vital was this measure considered for the baby’s health that, if for some reason no warm water was available on Shabbat, it was even permissible to heat up water for this purpose. Yet Rav Karo notes that nowadays this is not necessary — we see that babies are not washed with warm water, and nothing happens to them. Therefore, he concludes, it must be that “nishtanah hateva,” Nature has changed, and it is no longer an element of danger.

We may not cavalierly declare, however, that any regulation which no longer appears necessary or rational should be abolished on the grounds that “Nature has changed.” It is an argument that halachic experts are loath to employ, and one would hardly dare make such a declaration without ample precedent.

The Tifereth Yisraef undertakes to weigh the halachic validity of medical opinion; we cannot out of hand reject a medical statement which contradicts the Gemara, for, as we have seen, it is possible that matters have undergone a change since the time the Talmud was written. If it is necessary to conclude that “nishtanah hatevah,” perhaps we will have to reach that conclusion. But

18. See also
19. Yet Rav Karo notes that nowadays this is not necessary — we see that babies are not washed with warm water, and nothing happens to them. Therefore, he concludes, it must be that “nishtanah hateva,” Nature has changed, and it is no longer an element of danger.
20. We may not cavalierly declare, however, that any regulation which no longer appears necessary or rational should be abolished on the grounds that “Nature has changed.” It is an argument that halachic experts are loath to employ, and one would hardly dare make such a declaration without ample precedent.
21. However, the Ramo notes his disagreement with him on this point, arguing that there has been no change.
ultimately, Tifereth Yisrael concludes that we cannot justify an argument of nishtanah hateva in this case. It has never been shown that sucking out the blood is not an important factor in the remarkable track record of brit milah, halachically performed, as a spectacularly safe procedure for thousands of years. Doctors readily admit that indeed there is some value to metzitza, and that it reduces swelling. Therefore, the nature of things has not really changed so much that we can reject the Talmud's evaluation. Consequently, he writes that metzitza must continue.\textsuperscript{22}

**Minhag**

A further very strong consideration for continuing with metzitza be'peh, in the eyes of many rabbinic authorities, is the force of Jewish custom, a sacred minhag which has been observed for thousands of years. Not only is religious authority apt to be somewhat conservative when it comes to innovation, but the halacha itself grants tremendous significance to a custom; it is not to be taken lightly. This brings us to the next major question which we have to consider: how much weight does a minhag carry, under what circumstances may an alteration be made in age-old custom, and is such a change warranted by the present circumstances?

There is no question that in Jewish law, a custom attains great sanctity over time, sometimes even greater than that of a halacha. In Yevamot 115, the Gemara declares that even if Eliahu the Prophet himself were to appear and instruct us that we are mistaken in the way we perform a certain mitzvah, "we do not listen to him, since the people have already become accustomed [to do it a certain way...]." It is startling to discover that even when scholars realized that the community was following an incorrect custom, they were reluctant to effect alterations.\textsuperscript{23} In Taanit 28b, we find Rav, the

\textsuperscript{22} This position was approved also by R. Eliezer Horowitz in his "Shi'ur Avot D'Rav Asher."

\textsuperscript{23} There are many other such instances recorded: ב라면 נואז נ"צ considered the
greatest rabbinic authority in all of Babylon, unwilling to stop the common custom of reciting Hallel on Rosh Chodesh, although, since the prayer was not warranted, they were reciting a bracha in vain, which according to many poskim is a biblical transgression.\textsuperscript{24}

So strong is this sentiment that an accepted custom ought not be tampered with, even if it seems misguided, that Rambam penned the classical ruling, as follows:

\begin{quote}
והנה גזירה מוחלטת בברך ברכה על שם-binary מציון הגדול.
לכסל אינו יוכל לכסל על שם-binary הגדולيمنה מבנינו.
\end{quote}

And if this custom was accepted and spread among all the Jews, and a later Bet Din wants to abolish [the custom], it may not do so unless it is greater [than the previous Bet Din which instituted the custom] in both wisdom and number.\textsuperscript{25}

In light of the foregoing, it is understandable why the rabbis are so reluctant to countenance any tampering with the customary manner of performing metzitza. One could argue, however, that the Gemara never mentions metzitza by mouth. Although it is adamant about the importance of metzitza, it does not specify that it must be by mouth.

Perhaps based on this consideration, the community of Frankfurt-am-Main in 1885 published a pamphlet outlining the position of the Orthodox Gemeinde on this thorny question. Under the direction of Rabbi Samson Rafael Hirsch, the tiny embattled minority of Orthodox Jews had become a significant entity within the custom of kapparot on Erev Yom Kippur as wrong, similar to the forbidden רברך א直辖市. However, he would not change it. Similarly, the Bet Yosef cites the opinion of the Ran, who considered that it was technically permissible to chant the Megilla in translation, so that it could be understood by all, but would not allow it because it would be a change in the custom.

\textsuperscript{24} The text does add, however, that he would have stopped them were it not for the fact that they omitted certain parts of the Hallel.
\textsuperscript{25} However, there is a distinction between the case cited by the Rambam and the one we are dealing with: the Rambam discusses a regulation established by an official Bet Din, while it is difficult to know who instituted the custom of metzitza be'peh.
the very bastion of Reform in Germany. While adhering strictly to the dictates of halacha, the committed Jews in Frankfurt nevertheless felt that they had to confront the reality of strong scientific objections to the traditional methods and respond to the denunciation of ancient milah practices as barbaric and atavistic.

In the pamphlet, it was announced that hereafter all milahs performed in the kehillah would include metzitzita; however, rather than exposing the open wound to direct contact with germs which might be present during oral suction, the mohel was to use a sort of glass tube, with an opening at the top, so that his mouth would not come into direct contact with the cut, nor would blood enter his mouth. The new directive sought to comply with the talmudic requirement of metzitzita and even continue the ancient custom of metzitzita be'peh, albeit with a slight modification which could nevertheless still be termed metzitzita be'peh. Included in the pamphlet was a letter from R. Yitzchak Elchanan Spector, Rav of Kovno, expressing his approval of the new procedures. (In later years, acceptance was also to be forthcoming from Rabbi Chaim Berlin, Rabbi Chaim Soloveitchik, and Rabbi Aharon Kotler.)

Nevertheless, there were and are poskim who reject the proposal as an unacceptable innovation, contrary to the established minhag which the Jewish people has observed for thousands of years. They insist that the halacha does require direct oral contact, pointing to the express statement of the Ramo and Maharil that the mohel must spit out the blood and that he has to rinse out his mouth before reciting the blessing.

For those who follow the many poskim who approved the glass tube, it would seem to be an ideal solution for the AIDS problem, since according to many it satisfies the criterion of metzitzita (and perhaps even metzitzita be'peh), it does no violence to minhag Yisrael, and yet it conforms to the primary objective of our
sages to promote greater opportunities for sanitary healing of the circumcision.

There is, furthermore, a very strong argument to be made to the effect that our sages were not reluctant to modify a custom if they perceived the innovation as an improvement. Interestingly, a classic example of this readiness to innovate occurs in connection with another part of the milah process — periah.

According to all halachic opinion, periah is part of milah as mandated by the Torah. Rambam29 describes periah as part of milah as described in the Torah. There is absolutely no ambiguity in his instructions: after the initial cut, the mohel should use his fingernail to tear the soft mucuous membrane under the foreskin and roll it back on either side. The Shulchan Aruch likewise specifies this.30 Yet R. Yaakov Emden, living in the eighteenth century, indicates that by his time it had long been the practice to perform milah and periah in one step instead of two. Furthermore, he cites sources to indicate that this change had been instituted at a much earlier date, perhaps even by the time of R. Hai Gaon, who died in the eleventh century! Nowhere is any objection recorded despite the fact that periah is unquestionably part of the milah itself, and if the procedure must be performed exactly as mandated since earliest times, this “innovation”, one would think, should have evoked a storm of bitter criticism. There could have been ample grounds for objecting to a change in the milah-periah. The Midrash, extolling the wisdom and beauty of the human body which is uniquely constructed for the performance of mitzvot, notes that G-d gave people nails on their fingers so that they could perform the rituals of melika (a form of shechita of birds in the Mikdash) and periah. Nevertheless, when mohelim developed a more efficient method of performing milah and periah in one step, no objection was raised.

Perhaps we have to conclude, then, that the violent opposition to any modification of metzitza procedure in the nineteenth century

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29. הלכותميلחה פרק ב הלכות ב
30. הרוה דעה עמוד ב.
arose not from the particulars of the suggested changes but rather from an awareness that the entire controversy was fundamentally a ruse by the enemies of Judaism to destroy the foundation of Torah observance. Thus, they were resisted absolutely, on ideological rather than on technical grounds. But absent ideological bias, there may be times when modifications may be warranted or advisable.

Medical Opinion

The *brit milah* controversy in the last century highlighted a vexing problem in Jewish legal thinking, one which recurs in many areas of life, not just this one. How much validity should be given to scientific opinion when it comes to the formulation of normative Jewish practices? More specifically, how does the halacha react when scientific opinion seems to contradict talmudic principles?

Before we explore this topic, we must insert an obiter dictum: we discount altogether the scientific or medical opinions of people who do not believe in the Torah or who are advocates of a lifestyle contrary to Jewish thinking. As the *Tifereth Yisrael* wrote, in rejecting their contentions,

ואנין מוסĞי דאנים רואים היהב רודפי ישראל שחררב שלחם

ברוחב להבמעיטים להרייך בעניין אביגת איסורים...

... for we see that the majority of Jewish doctors ...

out of the waywardness of their hearts advocate that [we] should eat forbidden [non-kosher] foods.31

However, in the present situation, the cautions voiced by immunologists about transmitting the AIDS virus are not directed specifically toward any Jewish practice; moreover, it is conscientious Orthodox medical professionals who are bringing to the fore their genuine concern that the traditional *milah* practice might inadvertently spread the disease.

Already in the days of the Gemara, we find that the rabbis did seek medical advice; however, it is difficult to gauge what credence
they gave to medical opinion. In Nidah\textsuperscript{32} we find the following account: R. Eliezer told about a woman who approached his father, R. Zadok, to find out what to do, for she was discharging “some sort of red pieces” (k'min kelipot adumot). R. Zadok asked the other Sages, and they asked the doctors, who responded that this woman must have some internal wound which is sloughing off these red pieces. They said “Let her put the discharged pieces into water; if they dissolve, she is Tameh (ritually impure).”

The Rosh\textsuperscript{33} (in the early 14th century) pointed out the major difficulty with this passage — what is it coming to teach us? If the rabbis believed the doctors, why did they say to test the discharge? And if they were not prepared to believe the doctors, why ask their opinion? How then do we decide whether the Gemara felt that medical opinion has validity?

The Maharik,\textsuperscript{34} also a Rishon, felt that the rabbis were indicating that they were prepared to follow the doctors’ ruling.\textsuperscript{35}

R. Yosef Karo, the great sage who wrote the digest which

\textsuperscript{32} A. E., “Kabbalah and Medical Science,” pp. 59–70.


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form the veritable foundation of Jewish law, seems to be prepared to rely on the medical profession. In *Bet Yosef*, he explains that since the doctors knew that such a discharge (as was described in the *Nidah* passage) cannot come from the uterus and of necessity has to be from the kidneys, we can rely on them. Also, as we noted earlier, he was prepared to go along with the current medical thinking of his time which held that there was no need to wash a newborn baby with warm water before and after the *milah*, and therefore would not allow water to be heated up for this purpose on the Sabbath.

But both rulings are challenged by the Ramo, the Ashkenazi rabbi whose gloss on the *Shulchan Aruch* and *Bet Yosef* set the standard for Ashkenazi Jews. Commenting on the first case above, he writes

> And I am surprised at him, for it says in the Gemara that we do not rely on the doctors alone...

Apparently, he interprets the talmudic passage as indicating that the rabbis were interested to know the medical opinion but were not prepared to follow it slavishly; therefore, they advised the woman to perform a test to see whether the diagnosis was accurate.

*Chatam Sofer*, in the nineteenth century, is not prepared to give very much weight to medical opinion. However, he concedes that at the very least, the doctor’s pronouncement should be enough to create a doubt in our mind. Thus, on Shabbat or Yom Tov, if the doctor declares that a patient’s life is in danger, we follow his directions and transgress Shabbat or Yom Tov, not necessarily because we accept his word implicitly, but rather because his expert opinion is enough to engender a doubt, a *safek*. And in a situation of *safek pikuach nefesh*, the rule is that we take no chances and do whatever is recommended to save the patient’s life.

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36. יוהו דעה קצ"א, ד"ה חותב.
37. וינב ש"א.
38. יוהו דעה קצ"א, ד"ה א"ח צ"א, ז"א צ"א, צ"א צ"א. Just how the Ramo differs in practical terms is not easy to understand. See his gloss to the.
39. ש"א ו"ר נסנה מפור אבנ הער, כ"מ ב"ג. See also אגרות משלו, ו"ר ב"ג, י"ו.
In a further explanation of his position, the Chatam Sofer\textsuperscript{40} seeks to show that medical opinion is accepted by the halacha in a general sense only. But since it is not an exact science when it comes to issuing a ruling in any specific case, the rabbis should not rely on this general medical advice as binding. If they consider that the person for whom they have to make the ruling fits into the general category (\textit{rov}), they may choose to rely on the doctors.\textsuperscript{41} But, for example, in the case of an infant who has to undergo \textit{brit milah}, the Gemara has a specific evaluation of the status of the child — the Gemara holds that there is a \textit{chazaka} (prevailing condition) that all boys who are being circumcised are in mortal danger unless \textit{metzitza} is performed. In such a case, the general medical opinion that germs are present and may cause infection cannot override the rabbinic certainty that if \textit{metzitza} does not take place, the child is in danger of his life.

However, when the medical opinion (\textit{rov}) does not contradict the prevailing reality (\textit{chazaka}) as seen by our Sages, it seems prudent to take it into account. Thus, the glass tube or other methods of extracting blood from the wound would satisfy the dictates of halacha in a number of ways:

(a) \textit{Metzitza} is performed, assuring that blood is drawn from the wound, thus satisfying the criterion of the Gemara.

(b) It is sanitary, thus avoiding the danger of contamination about which the medical profession warns.

\textsuperscript{40} See further \textit{Sh”t Ha’Tamim Sofer}, Tiferet Ku”h, 11.

\textsuperscript{41} The Gemara, \textit{Sh”a”h}, 111:1, rules that for the first three days after a woman gives birth, she is not permitted to fast on Yom Kippur, and we violate the Sabbath for her. Rambam, in recording this law, adds “whether she says she needs it or even if she says she doesn’t need it.” (\textit{Sh”a”h} 111:1). The Mishna \textit{Be”h}, 111:3, records there a controversy among the rabbis, whether the Gemara posited the rule regardless of what the medical profession advises, or only if there is no medical opinion on the matter. He notes that Rambam was of the opinion that if the woman says she feels able to fast and the doctors also says that it is not necessary for her to transgress, then it should not not be done. See also \textit{Sh”a”h} 111:3 and \textit{Be”h} 111:3. The “\textit{Sh”a”h}” rules similarly. See also \textit{Sh”a”h} 111:4 and \textit{Be”h} 111:4.
To this writer, therefore, it appears that the solution offered by the Frankfurt community in the nineteenth century, and accepted by many leading poskim, would be an ideal solution to the problem posed by the AIDS epidemic. It insures the child’s safety by performing metzitza, which is a vital method of cleansing the wound, and it also guards against possible infection of either the child or the mohel. In short, it accords both with halachic requirements and medical guidelines.

Gloves

In a public statement criticizing the suggestion that metzitza be’peh be modified in order to avoid the spread of AIDS, Rabbi Menashe Klein remarks that a far greater danger of spreading the disease exists in the milah itself, for it is not unusual for the mohel to nick himself accidentally during the procedure. Although Rabbi Klein does not consider the advisability of the mohel’s using surgical gloves, that alternative seems obvious.

Dentists, nurses, lab technicians, and doctors now routinely wear gloves in the performance of mundane office procedures, for fear of inadvertently cutting themselves and coming into contact with the patient’s blood or saliva. Is there any halachic reason why a mohel, too, should not protect himself by wearing gloves as he performs the milah?

In Pesachim 57a the Gemara criticizes a kohen who covered his hands with silk gloves while performing the Temple service. However, the disparagement arose because of his motivation — he wanted to keep his hands from getting soiled, an unworthy attitude towards the holy work in the Bet Hamikdash. Based on this

42. In a public letter, dated 1988, Rabbi Menashe Klein of Brooklyn writes extensively refuting any arguments for elimination of metzitza be’peh, which he insists is a mitzvah, and anyone who does it will be protected. In the course of his argument, he notes that even if there is danger of transmission of disease, there is a far greater probability of its happening during the actual brit, for it often happens that the mohel nicks himself, and there could be an exchange of blood. If we accept the medical argument against metzitza be’peh, we would then have to be even more afraid to do milah altogether, and the mitzvah would have to be abandoned!
talmodic text, the *Pitchei Teshuva*\(^43\) rules that a sofer (scribe) may not write a *Sefer Torah* while he is wearing gloves.

However, if the motivation for wearing gloves were not personal fastidiousness but rather for protection or for sanitary reasons, it may be assumed that no objection would arise.\(^44\)

**Parental Choice**

We are thankfully not yet at the point where AIDS imminently threatens the Jewish community, but were such dire eventuality to develop, (G-d forbid), a case might be made for declaring that a father who nevertheless asks the mohel to perform direct *metziza be'peh* would be placing his child in a potentially life-threatening situation. Does a father have the right to take that chance? May he declare himself willing to rely on thousands of years of precedent, trusting in the protection of G-d to save from harm those who are sincerely concerned to perform a mitzvah in the best possible way? Or would we say that he is forbidden to endanger his child for a standard of religious observance which is not required and which may even be contra-indicated?

Actually, the father might have a precedent to draw upon. In the Gemara, Rav Poppa observes that although the rabbis had declared that on a very cloudy or windy day, no *brit milah* should take place (because the bad weather might be dangerous for the baby), nevertheless people do it all the time and nothing untoward occurs. He concludes that “since so many people do it, G-d watches out for the simple folk,” and saves them from danger.\(^45\)

The contention that when many people do something, even if it be dangerous, they will be saved from danger because “G-d watches over the simple” is indeed a rationale occasionally employed by halachists. For example, Rav Moshe Feinstein refused to declare smoking a forbidden habit although he conceded that much evidence pointed to its deleterious effect on health; he

\(^{43}\) *Pitchei Teshuva* רץ רעי רעי מתח צעד

\(^{44}\) *Sefer haBeraita* דע קדם מע"ז

\(^{45}\) *Iggerot haRebi* לעב
explained his refusal as based on the principle “since so many people do it, G-d watches out for the simple.”

It is only proper to question whether in the present circumstance, with AIDS being a very clear and present danger, anyone could legitimately argue that “many have done this” and “G-d has watched over them” because in truth, many people have engaged in behavior which is considered high-risk for contracting AIDS, and indeed, they have contracted it in ever-increasing numbers. G-d does not seem to be watching out for them at all. Even the most innocent victim of a blood transfusion has not been spared from the consequences of the AIDS virus. Under what pretext, then, could we venture the bravado to declare that “G-d will watch over the simple” in this instance?

Nevertheless, this rationale has been employed by a host of halachic decisors over the centuries, in a wide variety of situations, and some rabbis may choose to apply it here as well.

There is a further argument which could perhaps be offered to defend the position of those who want to proceed with the traditional *metzitza be'peh*, even if it is known to be dangerous and even if the ruling were rendered that it is not necessary. There is an impressive list of rabbis who, although in the minority, maintain that if an individual wants to be stricter than the law requires, he is permitted to do so, *even if it will result in his death!* The Rambam is categorically opposed to this option, terming it a sinful act of

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46. See further on this topic in the Ritva, as cited by the *Kesef D'Philasha*. The subject is also explored further in the *Shulchan Arukh* and the *Achtar*.

47. In the mid-nineteenth century, there was a cholera epidemic, and many doctors warned that if people did not eat on Yom Kippur, they would be in great danger. *S'dei Chemed* reports that nevertheless, many rabbis did not permit people to eat, but no one died because he fasted. He implies that the *Chatam Sofer* agreed with those rabbis who allowed the people to fast and he seeks to infer from this that even if doctors declare it dangerous to make *metzitza be'peh*, nothing will happen to those who do it. However, a close reading of the *Chatam Sofer*’s actual
suicide, and the majority of rabbinic decisors concur.\textsuperscript{48} Nevertheless, there are some authorities who contend that an individual may exercise the option to be more strict (although he may not rule for the public that they must do so).\textsuperscript{49}

Rabbi Dovid Cohen, in a lecture on the topic,\textsuperscript{50} raised a further question: The Avnei Nezer maintains that an extra precaution is placed upon the rabbis lest a rabbinic ruling have the effect of obviating a mitzvah entirely. Should rabbinic authorities, therefore, have to take into consideration the eventuality that their ruling—that metzitza be'peh should not be performed as long as the threat of AIDS remains imminent—might result in the mitzvah being abandoned altogether? Or might they rely on those who, regardless of any rabbinic ruling, would adamantly continue to perform metzitza be'peh, reasoning that thereby the mitzvah will not be obliterated?

**Suggested Remedies**

What are the results of our investigation? Let us recapitulate the issues and problems we have discussed:

1) The Gemara considered metzitza a vital step to insure the healthy recovery of the baby from the milah.

2) Challenges to Jewish practice based upon supposed scientific

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\textsuperscript{48} See R. Ovadiah Yosef, אופני הכבוד ואמונה, עניין ה Responsut, מסקנות ומשלים, ר"ת וידיעות, נא"ן ד"ת אביה, נא"ן ד"ת אביה, נא"ן ד"ת אביה, נא"ן ד"ת אביה.

\textsuperscript{49} See also my article "Potential Pikuach Nefesh: High-Rish Mitzvot," in Intercom, a publication of the Association of Orthodox Jewish Scientists, April 1987, pp. 3-8.

\textsuperscript{50} Annual Lupin Memorial Lecture, presented at Congregation Gvul Yaavetz, Brooklyn, New York, on November 13, 1988.
verities cannot be the determining factor in our religious lives. However, we are obligated by Jewish law to take into consideration the directives of the medical profession and take appropriate precautions.

3) Jewish thinking does not advocate closing our eyes and minds to medical or scientific realities, trusting that all will be well if we are sincere in our observance of mitzvot. The halacha will find ways to protect our welfare while adhering to the strict dictates of Jewish law.

A number of options lie before us, as individuals or as members of a community. First of all, of course, there is the option to do nothing, and to change nothing, trusting that milah will continue to prove beneficial for us and our children as it has for so many years. When the Romans threatened to kill any Jew who circumcised his son (in the Hadrianic persecutions of the second century), Jews nevertheless braved death to fulfill the mitzvah. Jews prevailed, while the Roman Empire has crumbled. The present danger, too, will pass.

Another remedy is suggested by Rabbi Menashe Klein in a public letter, wherein he adamantly defends metzitza be'peh. He proposes that the baby's blood can easily be tested for the presence of AIDS cells or antibodies prior to milah, and mohelim could be certified by their rabbis as having been tested free of AIDS contamination. These steps, he feels, would prevent the spread of the disease through brit milah. Although this is a very intelligent proposal, it might be exceedingly difficult to implement. Families might fear being labeled as AIDS carriers if their baby tested positive; there would be a great deal of pressure to suppress such findings, perhaps even to lie about them. In addition, it might be very difficult to get mohelim to agree to certification, and to assure that only "certified" mohelim be used. Moreover, the truth is that scientists just do not know enough about AIDS to be able to say with accuracy that a person is not incubating the virus. Our tests simply show whether the person already has the virus or antibodies in his blood, but are not able to determine whether they are yet to develop. Our knowledge is too scanty and our tests are not that
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reliable. Thus, this proposal may not actually offer an effective solution.

In the city of Baltimore, the rabbis and mohelim of the community have agreed on a plan which is admirably moderate, fair, and tolerant, while offering options which should win the approval of the most fearful parents or the most G-d-trusting ones.

The features of the Baltimore plan are as follows:51

a) The plan does not go into effect unless all mohelim in the city agree to abide by its terms (which they have now all done).

b) There will be no metzitza be’peh directly.

c) Metzitza will be performed with a glass tube.

d) If the father personally wants to perform metzitza be’peh for his own son, the mohel will instruct him how to do it.

e) There is no objection to parents calling in a mohel from outside the city to perform the milah.

Other choices remain, and perhaps new ones will be suggested as we begin to know more about AIDS and how it is spread or can be prevented. In the meantime, the Frankfurt method, devised a century ago, still remains as an attractive alternative to the traditional metzitza be’peh. In the eyes of many leading poskim, it fully satisfies the requirements of halacha and retains our respect for Jewish traditions. At the same time, it seems to offer important safeguards both for the mohel and the baby; moreover, it may prove to be an important factor in preventing the spread of the disease within the Jewish community.

Until such time as there are more definitive pronouncements from our poskim on this topic, it seems to this author that discretion is the better part of valor. As it says in Mishlei, “The wise man has his eyes in his head.”

51. Rabbi Heineman addressed the Association of Orthodox Jewish Scientists at their convention in June 1988 and outlined this plan.