Throughout history, society has created a binary gender system in which people are typically classified as distinctly masculine or feminine. For the most part, human beings have been able to fit neatly into these two categories, and there has been little objection to this system. It is no surprise, then, that halacha has similarly adhered to a binary gender system, differentiating men and women’s halachic obligations. However, for as long as these gender categories have existed, so have deviations from the norm. An androgynous, for example, one with ambiguous genitalia, defies the classic binary gender system. There is a history of androgynous people dating back to many ancient and pre-modern cultures. For instance, in the Symposium, Plato mentioned the idea of androgyny. He wrote about the creation of mankind as having started out with one sex and then separated into two. Despite the distinction between sexes, Plato often imagined all human souls as androgynous, or hermaphroditic, in their perfected nature [1]. Unlike Plato’s view of hermaphrodites as the image of perfection, Halacha, along with much of society, views intersexuals as abnormal. Rabbinic literature offers guidelines on the halakhic status of intersexuals.

Halacha divides those with unassigned gender into two broad categories: the androgynous (hermaphrodite) and the tumtum. The hermaphrodite, as defined by halacha, is a person who has both female and male genitalia, while the tumtum, according to halacha, is a person who has a flap over his genitalia which prevents the gender of the person from being ascertained. According to rabbinic literature, there are five possible gender categories by which an individual can be classified: male, female, part male and part female, safek (unsure of the gender), or berya bifnei atzma (a unique creature with its own characteristics) [2]. Most rishonim and poskim maintain that the hermaphrodite has a status of safek since neat classification of such an individual as male or female is difficult. Because of this doubt, the strictest opinion within halacha is to be followed. Thus, according to the Rambam and the Shulchan Orach, a hermaphrodite would be required to keep all laws pertaining to both males and females. Many, however, argue that the hermaphrodite has the status of a “certain male” and should thus be obligated to comply with the halachic standards set forth for a male [4]. In the case of a tumtum, however, normative psak maintains that he is considered a safek unless the covering is successfully removed such that the person’s gender can be ascertained. If the gender is successfully determined, the tumtum is considered a qualified member of its respective gender [2].

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The proper halachic response to bearing a child of uncertain gender is equally unclear. Until recently, a common practice in the medical field has been to immediately assign a specific gender, usually female, to the child after birth and then perform the appropriate surgery that follows that assignment. However, within rabbinic literature, the issue of assigning a gender has become particularly complex. According to the Rambam, R. Waldenberg, R. Asher Weiss, and R. Bleich, one should determine a child’s gender based on the child’s external sexual organs [2]. However, according to Rav Sternbuch, a child with ambiguous sexual indicia should always be surgically turned into a male [2]. The reason for this is that there are many halachic issues with assigning a female gender to this child. One of these problems is that the child would be prevented from performing certain mitzvot if classified as female. The only exception to this rule would be if the child in question has obvious external female organs, in which case the child would be classified as female [2].

Even with these halachic guidelines, many complications arise due to recent findings on the topic. None of the earlier poskim
considered genetics when determining the gender of the child, since there was little known about this field. Recent technological advancements have allowed for genetic testing in which one can determine whether the child has an XY sex chromosome pair (male) or an XX sex chromosome pair (female). This factor, although not mentioned by many of the major poskim due to the lack of information that was available to them, can prove very useful in determining the gender of a child. Furthermore, it has become apparent that although one can assign a gender by surgically changing a child into a male or female and raising the child as such, the assigned gender does not always psychologically resonate with the child. For instance, there was a case reported in Newsweek in 1997 of a boy who, due to a terrible accident that involved mutilation to his genital area during a routine circumcision in a hospital, was reassigned a female gender at eight months old. Despite surgery, hormone administration, and his cultural female upbringing, the boy psychologically felt masculine. He had always considered himself a “freak” until he learned the truth about his gender status and prior condition. As a result, he had his breasts removed and his genitals rebuilt and reverted back to his original gender [4]. This case shows that a person’s gender cannot be randomly assigned and is not only determined by social surroundings; gender is partially inherent within a person. It is important that a person psychologically feels comfortable within his assigned gender in order for gender assignment to be a success.

The issue of gender assignment in intersexual children has no clear-cut procedure. Although poskim have set forth some guidelines to determine how to handle the situation, it is clear that an assessment must be made on a case-by-case basis [3]. The application of traditional halacha to the continual advancement of medical technology has become increasingly difficult and complex. It is the job of the rabbinic authority to examine the issue of ambiguous gender as a whole, both its halachic precedents and the surge of new scientific information that is gathered each year, in order to determine the direction in which halacha will go in regard to this delicate matter.

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REFERENCES
[1] Plato’s Symposium, 360 B.C.E.