

## Introduction

1. Infectious Diseases Society of America, *Always-deadly measles complication more common than believed* 10/28/16  
Subacute sclerosing panencephalitis (SSPE) is a neurological disorder that is 100 percent fatal. Infants younger than 12 months, who are too young to receive measles, mumps and rubella (MMR) vaccine, can get infected with measles and later develop SSPE, which may lay dormant for years. While it was once thought the risk of post-measles SSPE was one in 100,000, recent research identified a rate as low as 1 in 1,700 in Germany among children infected with measles before they were 5 years old, and the new study found it is about one in 600 for those who get measles as infants before being vaccinated. There is no cure for SSPE and the only way to prevent it is to vaccinate everyone against measles.

2. Letter by Rabbi Shmuel Meir Katz, Rabbi Shmuel Kamenetsky and Rabbi Malkiel Kotler, 13 Kislev 5770  
After considering the nature of the current outbreak, the very high percentage of fully vaccinated individuals among the mumps cases, the serious risks associated with the MMR vaccine, and the halachic gravity of denying a child acceptance to school even for one day, it is our opinion that, unless truly obligated to do so law, no school has the right to deny a child acceptance to school on the grounds that he or she has not received the MMR vaccine. It is incumbent upon the *Menaholim* to insure that school nurses act in this regard in accordance with הלכה, and not based on secular medical advice alone.

## Is there a religious duty to make use of vaccines which are known to be safe?

3. Talmud, Shabbat 82a

אמר ליה רב הונא לרבה בריה מאי טעמא לא שכחת קמיה דרב חסדא דמחודדן שמעתיה אמר ליה אמאי איזיל לגביה דכי אזילנא לגביה מותיב לי במילי דעלמא אמר לי מאן דעייל לבית הכסא לא ליתיב בהדיא ולא ליטרה טפי... אמר ליה הוא עסיק בחיי דברייתא ואת אמרת במילי דעלמא כל שכן זיל לגביה

Rav Huna said to his son Rabbah: Why are you not [learning] before Rav Chisda, whose lessons are sharp?

Rabbah replied: Why should I go to him? He questions me about mundane matters! He tells me, "One who goes to the washroom should not sit immediately or press too hard..."

Rav Huna replied: He is involved in human life, and you say "mundane matters"? You certainly should go to him!

4. Rambam (12<sup>th</sup> century Egypt), Mishneh Torah, Hilchot Deiot 4:1

הואיל והיות הגוף בריא ושלם מדרכי ד' הוא, שהרי אי אפשר שיבין או ידע דבר מידיעת הבורא והוא חולה, לפיכך צריך להרחיק אדם עצמו מדברים המאבדין את הגוף, ולהנהיג עצמו בדברים המברין והמחלימים...

Having a healthy, whole body is from the paths of Gd, as one can neither understand nor know anything about Gd when ill. Therefore, one must distance himself from anything which damages the body, and one must accustom himself to behaviours which increase health and strength...

5. Talmud, Bava Kama 15b

רבי נתן אומר מניין שלא יגדל אדם כלב רע בתוך ביתו ואל יעמיד סולם רעוע בתוך ביתו ת"ל לא תשים דמים בביתך

Rabbi Natan said: How do we know that one may not raise a bad dog in his home, and one may not set up a weakened ladder in his home? Devarim 22:8 says, "You shall not place blood in your home."

6. Rambam (12<sup>th</sup> century Egypt), Sefer haMitzvot, Lo Taaseh 298

שהזהירנו מהניח המוקשים והמכשולות בארצותינו ובבתינו כדי שלא ימותו בהם בני אדם.

He commanded us not to leave obstacles and stumbling blocks in our lands and homes, lest people die by them.

7. Rambam (12<sup>th</sup> century Egypt), Mishneh Torah, Hilchot Rotzeiach uShemirat haNefesh 11:4

וכן כל מכשול שיש בו סכנת נפשות מצות עשה להסירו ולהשמר ממנו ולהזהר בדבר יפה יפה שני (דברים ד' ט') השמר לך ושמור נפשך, ואם לא הסיר, והניח המכשולות המביאין לידי סכנה, ביטל מצות עשה ועבר על "לא תשים דמים".

So, too, there is a commandment to remove any stumbling block which endangers lives, and to guard from it, and to be very careful with this, as Devarim 4:9 says, "Guard yourself, and guard your life." And if one does not remove it, and one leaves dangerous stumbling blocks, he fails to fulfill a commandment, and he violates "Do not place blood."

8. Rabbi Moshe Feinstein (1973), Igrot Moshe Even haEzer 4:10

כיון שעתה נעשה זה באופן קל לבדוק יש לדון שאם אינו בודק את עצמו הוא כסגירת העינים לראות מה שאפשר לראות, ומכיון שאם ח"ו אירע דבר כזה הוא להורי הילד צער גדול מאד מן הראוי למי שצריך לישא אשה לבדוק את עצמו.

Since it is easy to check, one should realize that failure to check one's self would be like closing one's eyes before that which one could see. G-d forbid, such an event would cause the child's parents extraordinary pain, and so it would be appropriate for a man who wished to wed a woman to test himself.

9. Rambam (12<sup>th</sup> century Egypt), Mishneh Torah, Hilchot Rotzeiach uShemirat haNefesh 11:5

הרבה דברים אסרו חכמים מפני שיש בהם סכנת נפשות וכל העובר עליהן ואמר הריני מסכן בעצמי ומה לאחרים עלי בכך או איני מקפיד על כך מכין אותו מכת מרדות.

The sages prohibited many activities because they endanger lives. Regarding anyone who transgresses, and who says, "I will endanger myself, and what business is it of others?" or "I don't care", we issue lashes of rebellion for him.

10. Talmud, Bava Metzia 112a

"ואליו הוא נשא את נפשו" - מפני מה עלה זה בכבש ונתלה באילן ומסר את עצמו למיתה - לא על שכרו?

"For this he puts his life on the line (Devarim 24:15) – Why did this person climb the ramp, become suspended from the tree, and give his life over to death? Was it not for his wages?"

11. Talmud, Yevamot 72a

א"ר פפא הלכך יומא דעיבא ויומא דשותא לא מהלינן ביה ולא מסוכרינן ביה והאידינא דדשו בה רבים שומר פתאים ד'.

Rav Pappa said: Therefore, we neither circumcise nor let blood on a cloudy day, or a day when the south wind blows. But now, when the masses trample this, we invoke Tehillim 116:6, "G-d guards the fools."

12. Rabbi Chaim Ozer (Early 20<sup>th</sup> century Poland), Achiezer 1:23

ועכצ"ל דזהו באמת חשש רחוק ומיעוט שאינו מצוי דלא חיישי רבנן להאי ועל זה יש לסמוך משום שומר פתאים.

One must conclude that [conception] is very unlikely to be a concern, a rare minority of cases, and the sages weren't concerned for this. For this, one may rely upon "Guards the fools."

13. Rabbi Moshe Feinstein (1981), Igrot Moshe Choshen Mishpat 2:76

על כל הדברים האלו שפרט אותם לא שייך לאוסרן ממש מאחר דהרוב מהן עניני הנאה הן ולרובא דרובא דאינשי לא מזיק להו כלום ואיכא הרבה מהן שא"א להזהר בהו להרבה אינשי שטרידי בפרנסתן... שלכן לא שייך לאסור אלא רק לעורר להעלמא במה שידעו איזה דבר הוא טוב ואיזה דבר הוא רע וליעץ להם...

Regarding all of these practices which [Rambam] specified, it is not relevant to actually prohibit them, since most of them are pleasures which do not harm the great majority of people, and many of these practices are unavoidable for people who are busy with their work... So it is not relevant to prohibit them, but only to alert people so that they will know what is good and what is bad, and to counsel them...

14. Rabbi Yaakov Ettlinger (19<sup>th</sup> century Germany), Binyan Tzion 137

אף על גב דכלל בדינינו דאין לך דבר עומד בפני פקוח נפש ואין הולכין בפ"נ אחר הרוב זה דוקא ביש ודאי סכנת נפש לפנינו כגון בנפל עליו הגל דאז חוששין אפילו למיעוטא דמיעוטא אבל בשעתה אין כאן פקוח נפש רק שיש לחוש לסכנה הבאה בזה אזלינן בתר רובא כמו לענין איסורא דאל"כ איך מותר לירד לים ולצאת למדבר שהם מהדברים שצריכין להודות על שנצולו

Even though we have a principle that nothing stands before guarding a life, and we do not follow the majority in matters of guarding a life, that is only where there is a definite threat to life before us. For example, this is where someone is beneath a ruin, and we are concerned for even a tiny minority [possibility that he yet lives]. But where there is no need to guard a life right now, but only to be concerned for a future danger, we follow the majority as we do regarding prohibitions. Otherwise, how could one enter the sea, or go into the wilderness, activities for which we thank Gd when we are saved!

15. Rabbi Aryeh Lipschitz (19<sup>th</sup> century Vilna), Shem Aryeh 27

לפרוש לים הגדול לשוט, היינו כדי לשוטט בעולם ולראות דברים חדשים... מהראוי להרחיק מזה, רק לצורך מזונות או לסחורה...

To go to sea in the Mediterranean, meaning to wander the world and see new things... It would be appropriate to avoid this, but only to go for livelihood or trade...

16. Talmud, Berachot 33a

"אפילו נחש כרוך על עקבו לא יפסיק." אמר רב ששת לא שנו אלא נחש אבל עקרב פוסק

The mishnah said, "Even if a snake is wrapped around one's ankle, he should not stop [the amidah]." Rav Sheshet said: This is only for a snake; for a scorpion, one should stop.

17. Rabbi Yitzchok Zilberstein, *Journal of Halachah and Contemporary Society* 69 (Spring 2015) pg. 100

One can see from this that *Minchat Shlomo* [Rav Shlomo Zalman Auerbach] is of the opinion that if most people assume that not being vaccinated is a *sakanah*, then – although the possibility of danger is quite remote – in specific situations it would be permitted to desecrate the Sabbath in order to be vaccinated, and surely someone must obtain vaccination on a weekday since the public considers not vaccinating to be a *sakanah*, albeit a remote danger.

18. Rabbi J. David Bleich, *Vaccination*, *Tradition* 48:2-3 (2015) pp. 53-54

Nor can the principle of *shomer peta'im* be invoked to justify assumption of a recognized danger that can be readily averted. That is clearly the import of the statement of R. Moshe Feinstein, *Iggerot Mosheh, Even ha-Ezer*, IV, no. 10, to the effect that, with the development of blood tests to determine whether prospective marriage partners are both carriers of the gene responsible for Tay-Sachs disease, one may no longer rely upon *shomer peta'im* in assuming the risk of that disease. For precisely the same reason, a danger posed by childhood disease for which a vaccine is available may not be assumed on the plea of *shomer peta'im*. That is certainly the import of the statement attributed to the late R. Yosef Shalom Eliashiv to the effect that "failure to immunize would amount to negligence." Perfection of vaccines that immunize against disease results in a situation in which failure to vaccinate is tantamount to willfully exposing oneself to *zinim pahim*. Once divine providence has made a vaccine safely available, any misfortune resulting from failing to avail oneself of immunization is to be attributed to human negligence rather than to divine decree.

19. Rabbi Yisrael Isserlein (15<sup>th</sup> century Germany), *Terumat haDeshen* 211

וצ"ע אי שייך למימר האי טעמא שומר פתאים לתלמיד חכם שהוא יודע ומכיר ונוכח למופלא בדורו

This requires examination – can one say "Guards the fools" for a Torah scholar who knows and understands, and is known as a stand-out in his generation?

20. Dr. Daniel Eisenberg, *The Ethics of Smallpox Immunization*, <http://www.aish.com/ci/sam/48943486.html>

One may suggest that the halachic concept of "God watches over the simple," in cases of risk that are generally accepted by the community might allow me to forgo immunization. This would be a difficult argument to make since most people are *not* willing to accept the risk of forgoing vaccination.

But is a vaccine a proper protective step?

21. Rabbi Moshe Feinstein (20<sup>th</sup> century USA), *Igrot Moshe Choshen Mishpat* 2:73:5

אם הוא מחמת שאינו מאמין לרופאים אלו צריכין למצא רופא שמאמין בו, ואם ליכא רופא כזה ואי אפשר לפניו מצד המחלה לחכות עד שיבין שהוא לטובתו וגם לא לשלחו כשרוצה בבית חולים וברופאים שהם בעיר אחרת מוכרחין הרופאים שבכאן לעשות בעל כורחיה אם כל הרופאים שבבית חולים זה סוברים שזהו רפואתו, וגם יהיה באופן שלא יתבעת מזה שאם יתבעת מזה אפילו שהוא ענין שטות אין לעשות כי הביעתותא אפשר שיזיקהו וגם ימיתהו ויהיה זה כהמיתהו בידים...

If a patient's refusal is because he does not trust the doctors, then they must find a doctor he trusts.

If there is no such doctor, and the disease is such that we cannot wait for him to understand that this is for his own good, and we cannot send him to another hospital and doctors in another town, then the doctors here must treat him against his will, if all of the doctors in this hospital believe that this is the way to cure him.

This should be done in such a way that he is not frightened, even if his fright is foolish, for the fright could harm him, even fatally, and that would be like actively killing him...

22. Rabbi Yaakov Emden (18<sup>th</sup> century Germany), *Mor uKetziah Orach Chaim* 328 **וכן אם רופא אמר**

בחולי ומכה שבגלוי שיש לרופא ידיעה ודאית והכרה ברורה בהם, ועוסק בתרופה בדוקה וגמורה, ודאי לעולם כופין לחולה המסרב במקום סכנה

With an illness or visible wound, for which has a doctor has certain knowledge and clear understanding, and he prescribes a tested, complete treatment, we certainly compel a recalcitrant patient, if the alternative would be dangerous.

23. Rabbi Moshe Feinstein (20<sup>th</sup> century USA), Igrot Moshe Yoreh Deah 3:36

כשהרוב הוא לחיים מסתבר שחייב כדכתב גם כתר"ה מסברא, אבל בספק השקול מסתבר שאין לחייבו, דאם הוא חס על חיי שעה שלו הודאין ואינו רוצה ליכנס בספק לאבד זה בשביל ספק שירויה עוד זמן ודאי רשאי...

It is logical to say that when most patients live, he is obligated [to undergo the treatment], but if the odds are even then it is logical to say we should not obligate the patient. If he is concerned for his definite, short-term life, and he does not want to enter into possibly losing that life for the possibility of gaining more time, he certainly is licensed...

24. Rambam (12<sup>th</sup> century Egypt), Guide of the Perplexed 3:37

ואמרו בפירוש כל שיש בו משום רפואה אין בו משום דרכי האמורי, רוצים בזה שכל מה שיגזרה העיון הטבעי הוא מותר וזולתו אסור... כל מה שנתאמת נסיונו באלו אע"פ שלא יגזרהו ההיקש הוא מותר לעשותו

The sages said explicitly that medicinal treatments are not subject to "Emorite ways", meaning that anything mandated by natural studies is permitted, and anything else is prohibited... Anything proven by experience may be practiced, even where logic does not dictate it.

25. Rabbi Moshe Sofer (18<sup>th</sup> century Pressburg), Chatam Sofer Yoreh Deah 45

והנסיון הוא עד נאמן יותר מכל הסברות הבנויות על ראיות

Experience is a more honest witness than all of the theories founded upon proofs.

26. Rabbi Yaakov Emden (18<sup>th</sup> century Germany), Mor uKetziah Orach Chaim 328 **וכן אם רופא אמר**

אף הסתמית ע"י רופא מומחה, כודאית חשיבא

Even an unknown treatment is considered certain, if authorized by an expert physician.

27. Rabbi Chaim Yosef David Azulai (18<sup>th</sup> century Italy), Shiyurei Berachah to Birkei Yosef, Orach Chaim 328:1

והיום שאין שום אדם יכול לרפאות כי אם ברשות חכמיהם, סתם כל עוסק ברפואה נקרא מומחה. מהרי"ל ואל"י.

Today, when no one can heal without license from their scholars, all who are involved in treating are called "experts".

28. Ramban (13<sup>th</sup> century Spain), Torat ha'Adam, Sakkanah 6

בפרק החובל (פ"ה ב') תנא דבי ר' ישמעאל ורפא ירפא מכאן שניתנה רשות לרופא לרפאות. פי' שמא יאמר הרופא מה לי בצער הזה שמא אטעה ונמצאתי הורג נפשות בשוגג לפיכך נתנה לו תורה רשות לרפאות.

The Talmud records, "They taught in the yeshiva of Rabbi Yishmael: The Torah says, 'He shall surely heal.' From here we see that permission is given to doctors to heal." This means the following: lest a doctor say, "What do I need with this pain? I might err and kill accidentally," the Torah permitted him to heal.

29. Rabbi Moshe Isserles (16<sup>th</sup> century Poland), Code of Jewish Law, Yoreh Deah 116:5

וכן יזהר מכל דברים המביאים לידי סכנה, כי סכנתא חמירא מאיסורא... עוד כתבו שיש לברוח מן העיר כשדבר בעיר, ויש לצאת מן העיר בתחלת הדבר, ולא בסופו (תשובת מהרי"ל סי' מ"א).

One should avoid all that introduces risk, for danger is more serious than prohibitions... One should flee a city when there is plague present – and one should flee at the start of the plague, not at its end.

30. DiPoce and Buchbinder, *Preventive Medicine*, Journal of Halachah and Contemporary Society 42 (2001), pg. 98

Rav Hershel Shachter explains that when one's risk of developing disease is a *miut hamatzui* [small, yet recognizable] one would be obligated to undergo the appropriate testing for the disease. Rav Shachter suggests that a *miut hamatzui* would be in the range of 10%... Thus, if a person's risk were in the range of 10%, he would be obligated to be vaccinated. [Footnote: He asserted that if the adverse reaction risk for a given vaccine was in the range of 1 in 1,000,000, the concept of *batla daito eitzel kol adam* would be applied to mitigate an individual's fear which might have prevented him from being vaccinated.]

31. Rabbi Yosef Shalom Elyashiv (20<sup>th</sup> century Israel), cited in Rabbi Dr. Akiva Tatz, *Dangerous Diseases and Dangerous Therapy in Jewish Medical Ethics*, pg. 48

In fact, Rabbi Elyashiv went so far as to assert that failure to immunize would amount to negligence. Refusing childhood immunizations on the basis of unsubstantiated fears of vaccine side-effects is irresponsible and out of order halachically.

## The duty to others

### 32. Talmud, Kiddushin 29a

ת"ר: האב חייב בבנו למולו, ולפדותו, וללמדו תורה, ולהשיאו אשה, וללמדו אומנות. וי"א אף להשיטו במים.

Our sages taught: A father's obligations to his son are: To circumcise him, redeem him, teach him Torah, marry him off, and train him in a trade. And some say to train him to swim.

### 33. Rabbi Asher Bush, *Vaccination in Halakhah and in Practice in the Orthodox Jewish Community*, Hakirah 13 (2012)

More recently Rav Elyashiv has been quoted in writing as saying that the parents of vaccinated students have the right to insist that all other classmates be vaccinated so as not to subject their children to unnecessary risk of illness.

### 34. Rabbi J. David Bleich, *Vaccination*, Tradition 48:2-3 (2015) pp. 53-54

A person is certainly under no obligation to allow others to pose harm to him or to his children. In days gone by, a teacher accepted students for tutelage exercising discretion in choosing his charges in the manner of any other artisan or professional. Alternatively, a group of parents cooperatively engaged a teacher to provide instruction for their children. Such arrangements were entirely at the discretion of the parents and the teachers. Presently for better or for worse, entire schools are established in much the same manner by a single educator or by a group of administrators... Communal institutions must be concerned with the educational welfare of all children in the community. Yet, even such institutions dare not sacrifice the many for the sake of the few. Quite to the contrary, their mandate is to maximize educational opportunities by safeguarding the health and welfare of all prospective students.

Policy decisions by community schools regarding admission of unvaccinated children should be made by judiciously weighing the risks and benefits involved. The danger of contagion may vary from time to time and from locale to locale...

### 35. Rabbi Eliezer Waldenberg (20<sup>th</sup> century Israel), Tzitz Eliezer 9:17:5:8-9

עוד עולה בדעתי דיש לומר דברופא מכיון שזהו גדרו של עולם ומנהגו שהרופא המכיר במחלות ובנגעי בני אדם מגיש להם להעזרה הדרושה, ואם לא כן תבוא אנדרלמוסיה גדולה בקרב החולים והבריאים גם יחד, א"כ על כגון דא מכיון שנוהג כמנהגו של עולם ותיקונו אין בסיכונו זה כדי לרפאות החולים בכדי להחשיבו כמכניס א"ע באיסור בסכנה בכדי להציל חבירו... ועוד זאת נלפענ"ד דבהיות דהרופא עושה כן ליטפל בחולים עבור פרנסתו א"כ מותר לו משום כך ליכנס גם בספק סכנה, ובדומה למה שהתירה תורה לפועל ליכנס למקומות סכנה עבור פרנסתו...

It further appears to me that one could say this regarding a doctor: Since it is standard that the doctor, who knows diseases and ailments, provides necessary aid, and without this there would be great devastation for the ill and the healthy. Therefore, he is acting in a standard way, for the normal function of the world, and the risk involved in treating the sick is not considered "introducing oneself into forbidden risk"...

It further appears, in my humble opinion, that since the doctor does this to treat the sick for a living, he is permitted to introduce himself into possible danger for this. It is like the way the Torah permitted a worker to enter danger for his livelihood...

### 36. DiPoce and Buchbinder, *Preventive Medicine*, Journal of Halachah and Contemporary Society 42 (2001), pg. 99

Rav Shachter also asserted that where vaccines are mandated by the state, such as in the case of immunizations before entering school, one would be obligated to be immunized based on the concept of *Dina d'Malchuta Dina* [the law of the land is the law].

### 37. Talmud, Menachot 64a

חולה שאמדוהו לגרוגרת אחת ורצו עשרה בני אדם והביאו עשרה גרוגרות בבת אחת פטורין אפילו בזה אחר זה אפילו קדם והבריא בראשונה.

If a patient is evaluated to need one fig, and ten men rush and bring him ten figs at once, they are all exempt, and even if they come in sequence, and even if he is healed with the first.