

Medical Triage

Translated by Yonah (Jonah) Rubin, MD

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AS THE CORONAVIRUS PANDEMIC progresses, medical centers worldwide fear impending shortages of medical equipment, particularly ventilators, and anticipate unfathomable decisions about who—and who not—to save. What is the halachic approach to medical triage in this scenario? Also, may physicians disconnect a patient who has no chance of survival from a ventilator, to avail the ventilator to another patient with a much better chance of survival?

There are two key factors to consider in developing halachic medical triage guidelines:

- Degree of danger: Halachah prioritizes a patient in grave danger over a patient in less immediate danger, who can be cared for later if/when their illness becomes more severe.
- Likelihood of survival: Halachah prioritizes the patient with a higher likelihood of survival.

Notably, age has no halachic relevance in medical triage. God alone knows and determines longevity, and the value of an individual's life is not necessarily related to their age. For these reasons or others, nowhere does halachah consider a person's age relevant in this context.

These triage guidelines apply only **before** a patient is connected to a ventilator or other medical device. However, once connected, one may not disconnect a

patient from a ventilator regardless of their prognosis, even to save someone much more likely to survive.

However—and I say this with tremendous fear and trepidation, since we are dealing with life and death issues—if there truly becomes a ventilator shortage, and patients are continuously arriving and requiring ventilation, then if a present patient has almost no chance of survival, it is my humble opinion that the medical team may withhold the ventilator from the present dying patient (*choleh b'faneinu*) to save it for the patient with a much better prognosis who is certain to come soon.

This opinion is based on the view of the *Chazon Ish*,¹ who sees no difference between a literal *choleh b'faneinu* (a patient physically present before a physician) and a patient who is **certain** to present soon. Consider the following: What would we do if a critically ill patient with almost no chance of survival arrived in the emergency room, where there is one ventilator remaining, and the ambulance dispatcher informs the hospital that a young patient, with an excellent chance of survival, is *en route* and will need the ventilator? In my opinion, we would reserve the ventilator for this patient, and this situation is just the same.

¹ Yoreh Deiah, siman 208.

We can seemingly prove this concept from a Talmudic story involving Rebbi,² based upon which the *Shulchan Aruch* in *Hilchos Tzedakah* ruled as follows:³

Rebbi was distraught that he gave his bread to an am-ha'aretz, because it was a year of famine, and [the food] that the am-ha'aretz ate detracted from [that which could have been given to] a talmid chacham.

However, if it weren't for this [fact that it was a year of famine], he [Rebbi] would have been obligated to support him [the *am-ha'aretz*].

If someone came before us dying of hunger, one is obligated to support him even though this might detract from a *talmid chacham* later.

Evidently, even though a charity distributor generally must support an *am-ha'aretz*, he should not do so at the expense of supporting a *talmid chacham*, **even when the *talmid chacham* is not immediately present**. Furthermore, if an *am-ha'aretz* is dying of hunger, but a *talmid chacham* in similar need is certain to come shortly after, we should again not support the *am-ha'aretz*. Only when a *talmid chacham* **might**, but will **not certainly**, come later, are these funds directed to the *am-ha'aretz* in immediate need. While there is a difference between saving people financially and medically, this discussion nevertheless reveals that, in the context of triage in matters of life and death, we consider someone who is certain to arrive as if they are already physically present.

Some halachic authorities maintain that upon arrival to hospital, a patient immediately earns a "right" to the available medical equipment, which cannot be revoked

for a patient arriving afterwards. However, in my humble opinion, no such right exists. The patient did not buy the ventilator or acquire it in any other way. The only relevant discussion points here are the halachic considerations in medical triage.

The *Teshuvos Minchas Shlomo*⁴ has a lengthy discussion on this topic, and seems to agree that one should not offer a ventilator to a patient unlikely to survive over another patient who is likely to survive. However, he adds a novel suggestion that if the physicians already began giving medical attention to one patient, they cannot leave this patient prematurely to care for another patient, similar to the halachic principle that one actively involved in a mitzvah is exempt from performing another mitzvah. He also suggests that the first patient may somehow have financially acquired a right to continued care. But these suggestions were not meant to be acted upon; they were discussed and considered, but never intended to be implemented. Truthfully, we never thought these questions would become practically relevant.

I did see an astounding opinion of Rav Zalman Nechemia Goldberg, *shlita*,⁵ where he argues, at great length, that one **should** disconnect a critically ill patient with no hope of survival from a ventilator to save another patient who may be saved, but there is a lot to debate about this opinion.

This is my humble opinion on this difficult subject. May Hashem enlighten us in the Torah and save us from mistakes.

2 *Bava Basra* 8a.

3 *Yoreh Deiah* 251:11.

4 *Tenyana* 86.

5 *Halachah U'Refuah*, vol. 2, p. 191; *Emek Halachah—Assia*, vol. 1, p. 64; *ibid.*, vol. 2, p. 183.

Experimental Treatments for Coronavirus

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MANY RABBIS AND DOCTORS have asked about offering unproven experimental coronavirus therapies to patients. Some of these drugs may cause severe side effects, including cardiac arrhythmias and blindness. Under normal circumstances, medical regulatory authorities are cautious and would not advise or authorize use of these medications in patients who are likely to otherwise survive. However, given the panic and urgency during the pandemic, many experimental treatments are being used and studied. This leads to the obvious question: May a physician prescribe unproven medical therapies when they may, in fact, be harmful?

A second, particularly challenging, question was asked regarding human challenge vaccine trials. Ordinarily, the process of assessing the efficacy of a vaccine involves administering a vaccine to one group of people, a placebo to a similar group, and following both groups to see if the vaccinated group was relatively more protected from infection. However, with social distancing and its resultant significantly slowed infection rate, this process will not work; it would take too long to collect actionable results. Therefore, some groups propose "human challenge" studies, in which the two groups (one vaccinated and one given the placebo) voluntarily and deliberately expose themselves to the virus, intending to become infected, to accelerate the findings of the study. All who expose themselves to the virus are endangering themselves, some are even risking death, whether in the vaccine group or placebo group. May one initiate such a study? And may one volunteer to endanger themselves by joining such a study, for the greater good?

Answering these questions is an awesome responsibility, and I fear the consequences of erring while dealing with matters of life and death. Nevertheless, we are obligated to face these questions, and so I will try to do so.

Prescribing/Taking Unproven Experimental Medications

I have discussed at great length, in several places,¹ the degree of risk one is obligated, or allowed, to accept in order to save another from even greater danger. The conclusion, based on the *Teshuvos Radvaz*, is that when the risk to oneself is small but real, and the danger facing the other person is significant and common, saving such a person is a *middas chassidus* but not obligatory. If this applies to saving an individual, then it certainly applies to saving many people, worldwide.

However, this discussion of experimental therapy is even better, because we are not dealing with someone accepting risk only to save others, but rather to save oneself as well! If the medication works, the patient will benefit from it, too. This is comparable to a case in *Teshuvos Shvus Yaakov*² regarding a dying patient who has only days to live (*chayei shaah*), and the only way to possibly save him is by administering a medication that might kill him immediately, or might cure him fully (*chayei olam*). The *Shvus Yaakov* rules that the patient may endanger himself for the chance of surviving more than just a few days.

1 *Teshuvos Minchas Asher*, vol. 1, siman 115; vol. 3, siman 121–122.

2 Vol. 3, siman 75.

The *Teshuvos Binyan Tzion*³ discusses a similar situation, seemingly unaware of the discussion of the *Shvus Yaakov*, and proves from the Talmud⁴ that the chance of complete cure (*chayei olam*) outweighs the value of transient, fleeting remaining life (*chayei shaah*). He therefore similarly rules that a dying patient may take a treatment that might bring about his immediate demise for the chance that it may instead cure him completely. He proves this further from the *Ramban* in *Toras ha'Adam*⁵ and the *Tur*,⁶ who discuss a statement of Chazal.⁷ To quote the *Ramban*:

“And he shall surely heal,” from here [the Torah] permits a physician to heal. Meaning, perhaps a physician will say, “What do I need this responsibility for? Maybe I will err and accidentally kill someone.” Therefore, the Torah granted [specific] permission to heal.

Thus, physicians need not fear that in trying to heal, they may kill, and they can therefore offer this medication to the dying patient.

One might refute this point, claiming that this permission to heal despite the risk, described by the *Ramban*, only applies to a physician who might accidentally or unintentionally kill a patient while providing an effective treatment, such as performing difficult surgery or even prescribing certain medications, but this does not apply in a situation like that of the *Binyan Tzion*, where the physician, aware of the side effects of this unproven treatment, knows in advance that they might cause the death of the patient, and asks whether he may prescribe these medications to begin with. Similarly, the opinion of the *Ramban* may not be applicable to a physician providing unproven coronavirus treatments where, again, the physician knows that a certain percentage of patients may be harmed by this treatment, and asks whether they may be prescribed initially. Nevertheless,

the *Binyan Tzion* ruled that the patient may take the potentially harmful medication, like the *Shvus Yaakov* ruled as well.

However, in my humble opinion, these discussions are actually irrelevant to our case, because the above cases describe patients who, unfortunately, only otherwise have hours or days to live (*chayei shaah*). In these cases, the fundamental halachic principle is that the possibility of longevity (*chayei olam*) outweighs the value of the patient's otherwise fleeting, remaining life (*chayei shaah*). However, in a coronavirus patient, despite the illness, the patient may recover without ever becoming critically ill. In such a case, who says he may endanger himself by taking experimental drugs?

On the other hand, the risk of death from these experimental therapies is exceedingly low, as major risks seem to be a danger to normal health and organ function, whereas the danger discussed by the *Shvus Yaakov* involved a very real risk of immediate death.

Every day, people undergo surgeries and treatments that have defined risks, without necessarily a risk of death, and no one pays any attention. I already discussed elsewhere⁸ that one may accept a defined, small risk if needed for his income or quality of life, and not necessarily only if needed for life and death purposes. And so in this case too, it seems that one may try an experimental therapy to treat coronavirus, even though the treatment may actually cause harm. Obviously, a physician may not administer an experimental therapy without informed consent, after explaining the risks.

Furthermore, for a young, healthy person who is unlikely to become dangerously ill from coronavirus, it is less clear that he may endanger himself to test the efficacy of a given drug. It seems more appropriate that this be done instead by others, whose lives are in more potential danger, and therefore stand to gain more from the potentially harmful therapy.

3 *Siman* 111.

4 *Avodah Zarah* 27b.

5 *Sha'ar Hameichush, inyan ha'sakanah*, 6.

6 *Yoreh Deiah, siman* 336.

7 *Bava Kama* 85a.

8 *Teshuvos Minchas Asher*, vol. 3, *siman* 121 and 125; *Minchas Asher Devarim, siman* 7; *Minchas Asher Shabbos* 87, 2.

“Human Challenge” Vaccine Trials

This second question is significantly more challenging than the first. The first question discusses an untested therapy that is thought to be likely to help and unlikely to harm; in such a case, it is quite reasonable to be lenient. But in this second question, we deliberately expose a volunteer to disease and endanger him without any direct benefit, just to determine the efficacy of a vaccine. It is less clear whether there is halachic room to be lenient here.

However, I already explained elsewhere⁹ that when there is a vital communal need, one may voluntarily and altruistically endanger himself to serve in a position that entails greater risk, such as a policeman, firefighter, rescue worker, and the like. These jobs require individuals to accept more risk than is asked of ordinary individuals, but they may do so because every civilized society needs people to take on these dangerous responsibilities for the greater good.

Apart from the logic, I also proved this from the fact that judges are commanded, “Do not tremble before any man.”¹⁰ The *Rambam*¹¹ explains this commandment based on the *Sifrei*:

A judge should not be afraid of anyone before him in judgment, that perhaps he may kill me or my son, perhaps he may set my field aflame, or chop my newly planted trees. For this, the Torah commands that “he [the judge] not tremble before any man.”

The *Bach*¹² wonders how this can be, since nothing overrides saving lives, and he distinguishes between a known murderer and one who is not. The *Teshuvos Shvus Yaakov*¹³ writes that no Jew is considered suspected to murder for financial gain.

However, it appears obvious that one can always be **afraid** if someone may wish to kill him. Certainly, a

judge concerned that someone may wish to kill him is not dealing with a *tzaddik* like Moshe and Aharon, but rather anyone who could potentially be dangerous, and in any other context we would advise someone to avoid such a person as much as possible, but we cannot allow a judge to stay away from such people—because otherwise we would have no judges and anarchy would prevail. Therefore, in the absence of a substantiated threat, a judge cannot act on suspicion alone.

While these situations are not exactly comparable, our situation is also seemingly one in which there is a great societal/communal need. Therefore, a young, healthy person may voluntarily expose himself to coronavirus in a controlled environment after receiving the test vaccine (or placebo), since the danger to such a person is extremely low; nearly all who died have been the elderly or those with medical comorbidities, and very few were young and otherwise healthy. There is tremendous utility to developing such a vaccine, which can save tens of thousands of lives. One may therefore participate in such a study.

There is much to debate here, but this approach seems to make the most sense.

One may point out that according to the *Noda B’Yehuda*¹⁴ and *Chasam Sofer*,¹⁵ furthering medical research is **not** considered a life and death matter (*pikuach nefesh*) in halachah, and cannot override any Torah or Rabbinic prohibition. Accordingly, they prohibited autopsies that may have advanced medical knowledge. Perhaps, then, our case should similarly be considered simply advancing medical research. If so, and it is therefore not halachically considered a matter of life and death, what gives someone the right to endanger their life to participate in such a study? This comparison, however, is incorrect for several reasons:

- Even if it is not halachically considered a matter of life and death, such that it cannot override a Torah or Rabbinic prohibition, it nevertheless is certainly a mitzvah, since an effective vaccine may save an

9 *Teshuvos Minchas Asher*, vol. 3, siman 121.

10 *Devarim* 1:17.

11 *Hilchos Sanhedrin*, chap. 22, 1; *Sefer haMitzvos*, l’s 266.

12 *Choshen Mishpat*, siman 12.

13 Vol. 1, siman 143.

14 *Tenyana, Yoreh Deiah*, siman 210.

15 *Teshuvos, Yoreh Deiah*, siman 336.

entire generation from disease and death. This is sufficient to allow someone to accept a remote risk.

- More importantly, this is incomparable to the study of anatomy, especially two hundred years ago, when the results of the investigation will not impact clinical care at any clear point. In our situation, however, experts believe the vaccine will be proven effective, and can then be immediately put to lifesaving use. The *Chazon Ish*¹⁶ wrote, in explaining the position of the *Nodeh B'Yehuda* and *Chasam Sofer*:

And there is no difference whether it is before us or not before us, rather, it matters if it is common...But it is not considered [to be a case of] possible life-saving when dealing with the future; things that at present do not exist at all. And in truth, we are not experts in the future, and sometimes what we think will be rescuing turns out to be shambles, and therefore we do not rule based on the distant future.

Verifying the efficacy of a vaccine would not be categorized as a benefit in the **distant future**, but

rather as a great mitzvah that is, in fact, halachically considered to be possibly lifesaving.

- The *Teshuvos Minchas Shlomo*¹⁷ writes that one may voluntarily participate in a medical research study, because the war against disease is considered a war that is a mitzvah (*milchemes mitzvah*), and in such a war, one may endanger oneself for the cause. But this idea isn't entirely clear to me, because if the fight against disease is considered a *milchemes mitzvah*, then everyone is **obligated** to fight, not just as volunteers, and certainly the Torah does not mandate that everyone join medical research studies. In my humble opinion, the comparison to *milchemes mitzvah* is incorrect; the laws of *milchemes mitzvah* apply only against enemy armies, but when protecting against wild animals or disease, only the halachos relevant to saving lives apply.

In summary, I think one may volunteer for a human challenge vaccine trial.

16 *Yoreh Deiah*, *siman* 208, 7.

17 Vol. 2, *siman* 82, 12.

Splitting Ventilators

Translated by Yonah (Jonah) Rubin, MD

PHYSICIANS IN NEW YORK have asked about the halachic permissibility of splitting ventilators. This is a technique that has been done in New York hospitals whereby, due to a lack of ventilators, in some circumstances, two patients who require a ventilator may be attached to a single ventilator, but in so doing, one patient may cause harm to the other.

Since there is no other option, and we must save as many lives as possible, this is permissible. In medicine, there are many times when caring for one patient negatively impacts another, but as long as this impact is unintentional, and not direct or definite, one may continue providing such care.

For example, we know that the more monitoring and medical attention paid to a given patient, especially the critically ill, the more likely they are to survive. Should we therefore refuse to accept more patients to the intensive care unit, because in so doing, the newly arrived patient will divert medical attention from patients already there? Every day, recovering patients are sent out of

the intensive care unit to make room for more critically ill patients.

The *Chazon Ish*¹ goes further and says that if an arrow is headed towards a group of people and it will likely kill several of them, and one can deflect the arrow towards a smaller group where fewer will die, one is obligated to do so, even though he is causing the death of people who were initially in no danger at all, since his intention and action is one of **saving** and not **killing**. It is an act of mercy, not cruelty. (According to Rav Dovid Frankel, a student of the *Chazon Ish*, the question arose after an incident in which a driver lost control of his brakes and was headed towards a group of people, and quickly swerved to avoid them but accidentally killed a bystander, and he came asking how to do *teshuvah*).

Certainly, in our case, where in the majority of cases both patients will survive and be cured, one should split ventilators, hoping that neither of them is harmed, even though added harm is possible.

1 *Yoreh Deiah, siman 69,1.*

These essays were written during various stages of the coronavirus pandemic. Facts and knowledge about this virus change daily. Torah is forever.