

New York City's Attempt to Regulate *Metzitzah B'peh*: What's the Big Deal?

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As readers may be aware, a diverse group of Jewish organizations and individual *mohalim* have filed suit in federal district court challenging the New York City Health Department's recently adopted regulation prohibiting *bris milah* with *metzitzah b'peh* (MBP) unless the *mohel* has first obtained written informed consent from a parent. This coming Tuesday, December 18, Judge Naomi Reice Buchwald will hold a hearing on the plaintiffs' motion for a preliminary injunction to prevent the City from enforcing the regulation.

As executive vice president of Agudath Israel of America, which is one of the plaintiffs in the case, I have been asked by many people why we took the extraordinary step of suing the City over this issue. After all, the new regulation does not prohibit MBP; it simply requires the *mohel* to obtain a signed consent. What's the big deal?

Actually, it is a big deal. A very big deal.

An Unprecedented Step

It is important to recognize at the outset that, while not all halachic authorities require *metzitzah b'peh*, many do. In practical terms, there are tens of thousands of families in New York City for whom MBP is an integral part of the *mitzvah* of *bris milah*. For them, the City's effort to regulate MBP is an effort to regulate *bris milah* itself.

It is also important to recognize the City's new informed consent regulation as part of a larger campaign designed to eradicate the practice of *metzitzah b'peh*. The *mohel*, in presenting the consent form for the parent's signature, is required to transmit the Health Department's opinion that MBP exposes the infant to serious medical risk of contracting a form of herpes virus (HSV-1), and its affirmative recommendation that MBP not be performed. Further, the Health Department has published a pamphlet to be distributed in New York City hospitals advising against the performance of MBP, posted a public anti-MBP statement on its website, and written an article in a journal published by the Center for Disease Control describing the allegedly unacceptably high risk of disease transmission through MBP.

Notably, the Health Department's conclusion that MBP carries significant risk of dangerous infection is not at all supported by the evidence. In the plaintiffs' court papers challenging the regulation, a number of distinguished experts strongly challenge the validity of the City's position. As Dr. Daniel S. Berman, Chief of Infectious Diseases at the New York Westchester Square Hospital, states in his legal affidavit, "In my professional opinion, the evidence does not show that MBP *has ever* resulted in transmission of HSV-1."

In regulating an aspect of *bris milah*, and mounting an aggressive campaign against a hallowed religious practice, the City has crossed a line heretofore considered sacrosanct in American society. Indeed, to the best of our knowledge, nothing like this has ever before happened in the history of the United States.

But the impact of the City's unprecedented step is not limited to American society; it is already being felt in other parts of the world as well. Most ominously, a

prominent Israeli pediatric organization recently pointed to the New York City regulation in support of its proposal to ban MBP in Eretz Yisroel altogether.

First Step Down a Slippery Slope

At this stage, the City seeks to accomplish its goal of eradicating MBP through “advice” and “recommendations.” However, there is good reason to be concerned that the City’s ultimate goal is to ban the practice outright. Mayor Bloomberg himself, in a recent press conference, stated: “There are certain practices that doctors say are not safe and we will not permit those practices to the extent that we can stop them.” Furthermore, the Health Department’s pamphlet for parents of newborn infant boys suggests that the City may be planning to regulate other aspects of *bris milah* as well.

Of course, all of this is being played out against the backdrop of recent high profile efforts in the United States and around the world that seek to ban *bris milah* altogether. The logic underlying the City’s current effort to regulate *metzitzah b’peh* can easily be extended by those who seek to promote a broad anti-circumcision agenda to regulate or even prohibit the entire practice of *bris milah*.

So what we have here, for the very first time, is an aggressive campaign by a governmental body against a practice that is considered integral to *bris milah* by many thousands of Jews. It does so on the basis of evidence that is flimsy at best. It goes so far as to force *mohalim* themselves to deliver an anti-MBP message with which they fundamentally disagree. At the same time, the regulation’s proponents openly proclaim their larger goal of eventually prohibiting the practice of MBP outright, and also imposing other restrictions on the practice of *bris milah*.

Given these ominous considerations, our Gedolei Yisroel concluded that silent acquiescence was not an acceptable option, and that the City’s unprecedented incursion into the practice of *bris milah* must be resisted. That is why we have taken the City to court.

A Call for Tefila

Our legal papers are strong, and present powerful arguments as to why the City’s new regulation should be declared unconstitutional. I am hopeful *b’siyata d’Shmaya* that the judge will agree with our position. In the meantime, as we await the judge’s decision, we know that the ultimate *yeshua* can only come from the ultimate Judge – *Hakadosh Boruch Hu* Himself.

That is why Gedolei Yisroel from diverse backgrounds have called upon Klal Yisroel to be *mispallel* for the success of our lawsuit, and the preservation of our holy *mesorah* from undue governmental interference. In this regard, the Va’ad Mishmeres Ha’bris has called for a *Yom Tefila* this coming Sunday, the eighth day of Chanukah (December 16), urging that *Tehillim* chapters 90-101 be recited in all shuls and yeshivos.

In these days of Chanukah, when the Yevanim engaged in a campaign *l’hashkicha Torasecha ul’haaviram meichukei retzonecha* – including specifically the *mitzvah* of *bris milah* – let us draw inspiration from the Chashmonaim and their incredible *mesiras nefesh* to preserve the *mesorah*. May we be *zocheh* that the miracles that occurred *ba’yomin haheim bazman hazeh* will be replicated as we fight our own battle to preserve Torah and Mitzvos in our time.