

As appeared in the pages of

# YatedNe'eman

---

## NEW EVIDENCE SHATTERS MYTH ABOUT *METZITZAH B'PEH*

### *Government Offensive Escalates*

By Debbie Maimon

For the second time in a month, evidence has surfaced about a case of neonatal herpes that shatters a myth about *metzitzah b'peh* (*mbp*) that the New York City Department of Health (DOH) is bent on propagating.

The DOH wants to prohibit *mohalim* from performing the practice during circumcision, claiming it can lead to death or brain damage in newborns by spreading herpes infection (HSV-1). No direct evidence in the medical literature supports this allegation. In addition, it flies in the face of clear evidence of an impressive record of safety over thousands of years of practice.

Nonetheless, the DOH has irrationally embraced the notion that *mbp* is life-threatening to infants almost as an article of faith.

A recent DOH report ascribes a 2011 case of neonatal death and an earlier 2005 case of neonatal brain damage to a herpes infection which it says was caused by *metzitzah b'peh*. The two cases are used to spread fear that the practice is dangerous to newborns and to rally public support for a DOH proposal aimed at severely limiting *mbp*.

In a live interview with *Yated* earlier this month, however, the mother

of the baby who died came forward to set the record straight. Mrs. K. testified that her newborn's older sibling who had recurrent oral herpes—a fact recorded in hospital records—and had shared his pacifier with the infant, had been the likely source of the infection.

This week, Mr. R.\*, the father of the baby in a second case cited by the DOH, in which a herpes infection in an infant led to brain damage, stepped forward with startling disclosures.

In an interview with *Yated*, Mr. R. exposed the fallacy of the DOH's assertion that the *mohel* was the most likely source of the infection. His testimony points to infection inadvertently transmitted by his wife, who had recurrent mouth sores before the onset of her baby's symptoms, and who testified as much to hospital authorities.

#### HUNTING DOWN THE MOHEL

Unfortunately, the DOH's blind focus on *mbp* has diverted attention from the more likely causes—infection by a sibling, parent or other caregiver—and has robbed the public of educational information vital to the

proper care of newborns.

In addition, as will be seen below through Mr. R.'s testimony, the DOH's efforts to lay blame at the doorstep of *mohalim* has led it to badger and harass the parents of the sick newborns to identify the *mohel* and to divulge information about the *milah*.

These intimidation tactics included bringing in CPS (Child Protective Services) to pressure the parents to talk, or face having a case of "child neglect" opened against them.

In the case of Mr. R., frustrated at the parents' lack of cooperation, the DOH even subpoenaed the couple's *rov*, a distinguished Brooklyn rabbinic leader and *halachic* authority. DOH officials subjected the *rov* to a hostile interrogation in an effort to extract information about the *mohel*, the baby's circumcision and the *rov's* colleagues and congregants, who might then be similarly pressured to divulge information.

Although almost seven years have passed since these events, neither Mr. R. nor his *rov*, Rabbi P.\* have forgotten the anguish they caused.

In an interview with *Yated*, Mr. R. said he was galvanized to come forward after reading about a similar case of neonatal herpes described above, in

which the infant died. The mother was made a subject of a criminal investigation after refusing to disclose the name of the *mohel*.

"I couldn't help but notice how similar our stories are," Mr. R. told this writer. "You would think in a hospital the main interest would be how to help the baby. But we did not feel this was their main concern. Behind the friendly façade, they were trying to build a case of child neglect against us because we wouldn't give them the information they wanted about the *mohel*."

At the time these events played out, Mrs. R. was running back and forth from the hospital to her family, trying to take care of her children and keep the home running, while coping with the devastating fact that her new baby had brain damage.

"She would me call me crying about how they were hounding her at the hospital and asking what she should do," Rabbi P. who was present at the *Yated* interview, recalled. "Until I myself was subpoenaed and questioned in the same manner, I could never have imagined responsible officials would conduct themselves this way."

### **SHE BELIEVED SHE HAD KNOWINGLY INFECTED HER CHILD**

Recalling the traumatic saga of herpes infection that led to brain damage in his infant son, Mr. R. recounted to *Yated*, in the presence of his lawyer, Mr. Yerachmiel Simins, the events that led up to the baby's hospitalization first in Maimonides Medical Center and afterwards in Columbia Presbyterian.

He said that at seven weeks old, one week after the baby's *bris* which due to jaundice had been delayed, the infant came down with a rash and blisters in the diaper area. Doctors at Maimonides diagnosed herpes and treated the infection.

After two weeks the baby was discharged, only to be rushed to Columbia three weeks later when he was stricken with seizures. The parents learned that the HSV-1 infection had

spread internally, causing irreversible brain damage.

Mr. R. recalled being questioned repeatedly at both hospitals about the identity of the *mohel* and whether *mbp* was performed. The couple declined to respond.

In response to inquiries about whether anyone in the family had herpes at the time of the baby's illness, Mr. R. recalled that his wife had told health workers she herself had suffered a bout of mouth sores prior to the baby's hospitalization.

Had health workers pursued this important clue, they would have learned that Mrs. R. herself believed, after learning how a herpes infection is transmitted, that she herself had unknowingly infected her baby due to her own cold sores.

As she told her lawyer, Mr. Simins, she had a habit of biting her index finger; when applying ointment to the circumcision cut on her baby and changing the gauze dressing, that is the finger she invariably used. She suspected that the germs were carried from her saliva to her baby via her index finger as she was never told to wash her hands before changing the dressing—and never did.

This vital roadmap to the baby's illness was ignored by the hospital and the DOH in their knee-jerk attempt to link the infant's infection with the *mohel*.

### **BUILDING A CHILD NEGLECT CASE**

"My wife got the brunt of the questions because she was in the hospital with the baby most of the time," Mr. R. recalled. "They would try to get the name of the *mohel* in all kinds of ways, sometimes by working the question into a friendly conversation, like, "So you made a *bris* recently? I have a new grandchild whose *bris* is next week. Which *mohel* did you use?"

When indirect questioning failed to yield results, frustrated health workers resorted to other methods. Plans were put into place to open a case of child neglect against Mr. and Mrs. R.

A meeting was called with at least ten doctors, nurses and DOH officials to discuss the potential for such an investigation.

"One of the doctors who attended this meeting later shared this information with me," Mr. R. recalled. "He said the meeting's purpose was to find a way to pressure us to give the DOH the information they wanted. Another doctor and friend of family, Dr. Allan Werzberger, pointed out to me on the medical chart the signatures of all the people at this meeting. He said it might be a good idea to have a copy of his memo but I didn't follow it up."

Mysteriously, when the hospital turned over the baby's medical records to Mr. R. upon his request, the document about the meeting was cut off at the bottom, with the names of the attendees missing.

But evidence of the scheme to concoct a case of medical neglect jumps out from the paper trail left in handwritten notes by Child Advocate Coordinator Dr. Jocelyn Brown, who was called in by the DOH's Dr. Susan Blank. The notes sum up a meeting with Dr. Blank over the problem of Mrs. R. refusing to crack under pressure and what to do about it.

"Mom not giving DOH much information about the time and place of the circumcision and who did it," Dr. Brown's "Child Patient Consultation" begins. The notes go on to describe a chilling strategy to be used in extracting the information. "*We discussed the possibility of reporting [Mr. and Mrs. R.] for medical neglect and lack of cooperation in providing information to the DOH.*"

(SEE SIDEBAR)

### **CITY'S OFFENSIVE AGAINST MBP GAINS MOMENTUM**

The offensive against *metzizah b'peh*, far from abating, has picked up momentum, as remarks by Mayor Bloomberg last week denouncing the ritual as "putting a child's life in danger" were played up by the media.

"We will not permit this practice [of *mbp*] to the extent that we can

stop it," the mayor said.

Bloomberg's remarks drew fire for being insensitive and disrespectful.

"Orthodox Judaism isn't barbaric," said Brooklyn Assemblyman Dov Hinkind. "Who cares more about children than their own parents? There's no call for Mayor Bloomberg to speak disrespectfully to our community, to speak condescendingly about our cultural traditions."

The rabid offensive against *mbp* has sounded an alarm in Orthodox Jewish groups who view the city's stance as irrational and indicative of an agenda that has little to do with a public health issue.

### **'INFORMED CONSENT' PROPOSAL VIOLATES FREEDOM OF RELIGION, SPEECH**

A DOH proposal under serious consideration would prohibit *mohelim* from performing *mbp* without first cautioning the baby's parents about the alleged life-threatening dangers. The mohel would be required by law to obtain the parents' written consent on official government forms.

Orthodox organizations in America, Canada and Israel have joined forces to vigorously protest the city's efforts to interfere with the sacred mitzvah of *bris milah*, and to issue a rebuttal of its unproven medical claims.

In a pair of hard-hitting legal overtures to the DOH by acclaimed legal firms Jones Day and Summer/Young, Orthodox Jewish leaders from Agudath Israel, The Central Rabbinic Congress of the USA and Canada (CRC) and the International Bris Association (IBA) have warned that the city's proposal to regulate *mbp*—if adopted—will trigger a fierce court battle over its legality.

The legal letters addressed to the DOH attack the proposed amendment for violating the bedrock constitutional rights to freedom of religion and freedom of speech.

"The proposal is not just bad public policy," wrote Jones Day attorneys Shay Dvoretzky and Yaakov Roth on

behalf of IBA, "it would interject the government into venerable religious ritual that boasts an incredible safety record." There is no precedent for such government intrusion into Jewish ritual.

The Jones Day memo also blasted the city for seeking to force *mohalim* to say something they fiercely dispute. That is a direct violation of the right of Freedom of Speech, the brief said.

The law that protects one's right to speak freely, also protects a person from being forced to utter something against his will. To compel a *mohel* to participate in "a misguided effort to spread undue fear about *metzitzah b'peh*" is clearly illegal, the letter argued.

### **PROPOSAL SUSPICIOUSLY VAGUE**

Attorneys Dean Summer and Jeffrey Baker writing on behalf of the CRC, exposed additional flaws in the proposal about "informed consent," noting that it contained no model text or specific language that would enable the public to make an informed choice to approve or reject it.

How can the community accept a proposal whose parameters and implementation are unknown at the present time, and will only be decided—by the DOH—at a later stage?

Given the erosion of trust about DOH motives with respect to *mbp*, and the suspicion that a political agenda is driving the train, why would the Jewish community be receptive to even a benign-sounding proposal about a limited form of government regulation?

### **ISSUE UNITES ORTHODOX WORLD**

The issue has generated solidarity among all streams in the Orthodox world—uniting the full spectrum of Chasidic and Litvish communities against any form of government regulation of *mbp*.

Agudath Israel in a separate letter to the DOH said the proposal, if adopted, would poison Jewish community relations with the DOH, destroying trust and undermining good will.

"It would foster the perception

in the community that the DOH is heavy-handed, set on direct confrontation and not interested in working with the community," the letter said.

It urged the DOH to rethink its approach and to turn to the 2006 protocols adopted by New York State in cooperation with doctors and rabbis representing the Orthodox Jewish community.

### **STANDING UP TO HYSTERIA**

The 2006 protocols called for public education about the risks of neo-natal herpes and the warning signs to be on guard for. It also required specific sanitary procedures for *mohalim* to follow which should eliminate any possible risk of transmitting infection.

The protocols were hammered out six years ago in extensive negotiations between the NY State Health Department and representatives of the Orthodox Jewish community. Experts believe they have been effective in raising safety standards.

Yet city officials feel the need to depart from the protocols and insist on "informed consent" to curtail *mbp*. Why? This intransigence and bias has baffled observers and spurred the suspicion that a political agenda has overtaken genuine public health concerns.

The CRC in a letter to the Department outlined the "fatal legal flaws" and "flawed medical science" underlying the proposal for "informed consent." The letter added that "we trust in the Department to stand up to what verges on hysteria and recognize that legitimate public health education can be undertaken to protect infants from HSV-1, without intruding on our religious rites."

Many see the DOH proposal for informed consent as a dangerous harbinger of further restrictions and regulations to come. Suppose "informed consent" is adopted but fails to limit the practice of *mbp*? Will the next step be a proposal to ban it entirely; as Mayor Bloomberg has made it clear he would like to do? What next? Targeting *bris milah* itself?

*\*Full names omitted to protect privacy.*

# MEDICAL RECORDS TELL A CHILLING STORY

Mr. R. is in possession of his child's medical records from Columbia and shared their contents with this writer. The record shows that when the time came to discharge the baby from Columbia, the couple was informed that an ACS (Administration for Child Services) coordinator had been called in by the Department of Health to determine if there were grounds to suspect child neglect.

Mr. R. understood this to be a threat. "They let me know my life would be a lot easier if I just gave up the name of the *mohel*," he said.

From the handwritten notes by the aforementioned Dr. Jocelyn Brown, the Child Advocate Coordinator in the case, a picture emerges of Dr. Susan Blank attempting to implement the threat by enlisting Dr. Brown in a scheme to report the couple for medical neglect.

Dr. Brown describes the strategy in her notes under "PLAN":

The plan calls for "DOH to continue to get all the [baby's] medical records from the outpatient department;" to arrange "a meeting with the DOH and Mr. and Mrs. R. to obtain details about who the *mohel* was and where the circumcision was done." And lastly, "to discuss possibility of reporting [for medical neglect] with medical and DOH team."

The baby's medical records along with the medical records of the couple's other three children were in fact requisitioned by the DOH and turned over by the family's pediatrician. In addition, a psychiatric evaluation was ordered for Mrs. R. to determine if she was a fit parent.

The record shows further that discussion took place about whether to hold up the baby's discharge while an investigation was underway, and the possibility of placing the baby in a special "therapeutic nursery." [Read: *remove the baby from mother's care.*]

Below are excerpts from the Mr. R's baby's medical records, in which the groundwork was being laid to launch an investi-

gation into the couple's incompetence as parents.

Under "Case Management: Social Worker/DOH Issues:" Dr. Susan Blank wrote, "Mom not forthcoming with information regarding details of circumcision; date, who performed it; how it was performed, etc."

The psychiatric evaluation was even more damning. Mrs. R. was described as showing "flat affect" (little or no emotion), and "as not engaging well with infant when examiners in room."

The report went on to say that the mother "was not forthcoming about information"; that she was "guarded" ... and "refused interview" with the psychiatrist. [Which mother, knowing she was at the mercy of "examiners" who were scrutinizing her for negative findings would behave differently?]

The Discharge Summary went on to recommend infant-caregiver therapy (teach mother how to love and care for her baby) and to assign the baby to a "possible therapeutic nursery," while the discharge was being stalled.

## LAST MINUTE CHANGE OF HEART

Fortunately for Mr. and Mrs. R., the Child Advocate Coordinator, Dr. Jocelyn Brown had a change of heart. As she became more involved in the case and better acquainted with Mrs. R, she saw no basis for a claim of medical or child neglect and according to the Discharge Summary, said so. Thus, the disastrous consequences to which a case of medical neglect would have led thankfully did not materialize.

The Discharge Summary notes this sudden turnaround: "After further assessment by the primary medical team" (Mrs. R.'s physicians as opposed to experts called in by the DOH), the recommendation to remove the baby from his mother's care was found to be "not necessary." In line with her doctor's evaluation, Mrs. R. was deemed "capable and with good social support," as well as "active with her child."

The baby was discharged but the DOH obstinately refused to drop the case. Two weeks later, Mr. and Mrs. R. were subpoenaed and questioned again by the same Dr. Susan Blank whose plans had been thwarted by Dr. Brown.

Frustrated at their failure to pry information from the parents about the *mohel* and whether *mbp* was performed, Blank and Dr. Julie Shillinger then subpoenaed the couple's *rov*, Rabbi P., together with a third woman, Ms. Goldberg-Kahn, counsel for the DOH, the women questioned the *rov* relentlessly.

For a half hour, Rabbi P. was interrogated about whom he discussed the case with, as if "the case" involved a crime.

Did you discuss it with your colleagues? With congregants? With any members of the Mr. and Mrs. R.'s family? Have you told anyone who performed the baby's circumcision? Have you discussed the baby having *metzitzah b'peh* with anyone other than Mr. and Mrs. R.? Has anyone discussed the circumcision with you other than Mr. and Mrs. R.?

Rabbi P., who on the advice of counsel refused to answer many of the questions, described the scenario as "shameful."

Without a shred of evidence linking the *mohel* to the baby's contraction of herpes, he says, "there was no justification for badgering a rabbinic leader totally unconnected to the episode about his private conversations with colleagues and congregants. There was no excuse to harass me about what I may have said to anyone about anything at all. This was an abuse of power."

"It was strictly for the purpose of intimidation, to insult *kovod haTorah* on the pretext of protecting the public."

The greatest irony in all this, Rabbi P. said, "is that there is no government or system anywhere in the world that places a higher value on life than the Torah. But for people hostile to Yiddishkeit, *metzitzah b'peh* sells well as a way of ridiculing *frum* Jews and the Torah."