

# Are healthcare workers obligated to risk themselves during the COVID-19 pandemic according to Jewish law? A response to Solnica *et al*

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## ABSTRACT

Solnica *et al* argue that “Jewish law and modern secular approaches based on professional responsibilities obligate physicians to care for all patients even those with communicable diseases”. The authors base their viewpoint on the opinion of Rabbi Eliezer Waldenberg and apply it to suggest that physicians are obligated to endanger themselves during epidemics, such as COVID-19. It is argued that Solnica *et al*'s analysis of Rabbi Waldenberg's text and their conclusion that healthcare workers are obligated to endanger themselves while treating patient who suffer from contagious illness during epidemics according to Jewish law suffer from various shortcomings. Indeed, Jewish law looks favourably on healthcare workers who take a reasonable risk in treating their patients in the context of epidemics. However, it is considered a voluntary supererogatory act—not obligatory. Solnica *et al* may express a legitimate ethical viewpoint. However, it does not seem to represent the mainstream approach of what Jewish law would demand as obligatory from its practitioners.

In their exploration of the “Jewish ethical perspective” on risk to healthcare workers during the COVID-19 pandemic, Solnica *et al*<sup>1</sup> state “regarding healthcare workers, there is agreement for ethical, professional and societal reasons that they are required to put themselves in harm's way to care for their patients”. They base their viewpoint on the opinion of Rabbi Eliezer Waldenberg,<sup>2</sup> who they report “brings a number of reasons why a physician should be required to endanger himself or herself to care for patients with a possible transmittable disease”. They apply Rabbi Waldenberg's writings to the COVID-19 epidemic situation and conclude that

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“Jewish law and modern secular approaches based on professional responsibilities obligate physicians to care for all patients even those with communicable diseases”.

Indeed, coming to the aid of a neighbour (“good Samaritanism”), which is considered a supererogatory act in most Western societies, is obligatory according to Jewish law.<sup>3</sup> However, under ordinary conditions, it is prohibited to voluntarily enter a dangerous situation<sup>4</sup> as is emphasised by the biblical instruction “Take ye therefore good heed unto yourselves” (Deuteronomy 4:15). Moreover, if a person voluntarily endangers himself or herself in a life-threatening situation without being obligated to do so and eventually dies, it may be considered as blameworthy as committing suicide.<sup>5</sup> When these two guiding principles collide, namely, in a situation in which the rescue of another person involves risk-taking, the mainstream opinion in Jewish law dictates that a person is not required to significantly endanger himself in order to save another person.<sup>6,7</sup> Nevertheless, Solnica *et al* argue that according to Jewish law, healthcare workers have a *specific professional duty* that mandates a higher level of risk-taking in comparison with other individuals in non-medical situations.

It may be argued that Solnica *et al*'s analysis and specific conclusion that claim a professional *obligation* to care for patients with COVID-19 according to Jewish law, in spite of the risk, suffer from various shortcomings, as follows.

First, a finer reading of Rabbi Waldenberg's text from which Solnica *et al* quote, especially its concluding paragraph, suggests that Waldenberg indeed *allows* physicians to endanger themselves in treating a patient who suffers from a contagious disease, and certainly he perceives it as a praise-worthy act, but he *does not establish an obligation* to do so.

Second, Solnica *et al*'s reading of Waldenberg's text lacks sufficient critical analysis of associated and relevant texts. Rabbi Waldenberg based his approach on Rabbi Moshe Isserles (Rema), a prominent

sixteenth century Jewish law scholar from Poland. The Rema's text<sup>8</sup> relates to a landlord who discovered that a renter's wife developed a contagious disease and therefore he wanted to cancel the contract. The Rema ruled that the contract cannot be infringed, based on contract law analysis. At the end of his ruling, the Rema dismissed the concept of contagious illnesses altogether, including any legal ramifications that may ensue from it, except for leprosy (*ra'atan*) which is explicitly regarded as a contagious disease in the Talmud. Various Jewish law scholars questioned the Rema's opinion relating to the lack of validity of the contagious disease concept. In fact, in another ruling, the Rema himself stated<sup>9</sup> that one must immediately run away from a city that has been afflicted by a plague. It would be inappropriate for twenty-first-century medical scholars to take the Rema's medically oriented comment, originating from sixteenth-century perceptions, at face value. No modern-day physician would disregard the potentially fatal nature of numerous infectious diseases including the novel SARS-CoV-2 virus and its associated COVID-19 illness.

Third, Rabbi Waldenberg restricts the Rema's permission to visit a person who suffers from a contagious disease, only to situations in which there is a *single* patient who is suffering from an infectious disease, and when the disease has *no fatality risk*. However, in epidemics or in situations in which the disease entails a fatality risk, the Rema's ruling becomes irrelevant. Thus, applying Rabbi Waldenberg's text to the COVID-19 epidemic is in contradiction to Waldenberg's two explicit caveats. Moreover, Rabbi Waldenberg clearly states that in situations in which the danger is clear and certain, as opposed to intangible or abstract, then not only there is no obligation to endanger oneself but also it would be forbidden.

Fourth, Solnica *et al* argue that Waldenberg “writes that the needs of society *mandate* that a physician care for all patients... He compares this to a soldier who is *obligated* to go to war *for his or her country*”. However, this is not what Waldenberg writes. In fact, Waldenberg quotes a precedent nineteenth-century Jewish law ruling, relating to the *permissibility* of providing monetary compensation to an individual in order to incentivise him to *voluntarily* join the army. Under such circumstances, if that individual during his military service would be involved in a war and be killed, it would not be considered sinful such as if he would have voluntarily committed a suicide. Clearly,

this is not the case of an individual who fulfils a “societal obligation”, as Solnica *et al* argued. It is in this context that Rabbi Waldenberg maintains that it may be permitted to voluntarily place one’s life in danger for financial gain or for fear of losing one’s professional position if the risk is not taken.

Fifth, Solnica *et al* should have been more cautious with their broader and decisive conclusion that “*Jewish law and modern secular approaches* based on professional responsibilities obligate physicians to care for all patients even those with communicable diseases”. Even if they maintain that Rabbi Waldenberg’s position is that physicians have a specific professional duty that mandates risk-taking above and beyond the conventional Jewish law principle according to which an individual is not required to significantly endanger himself in order to save another person, Solnica *et al* should have clearly stated that this view is an unconventional and minority opinion. At least, they could have mentioned conditions or situations that even according to their view, healthcare workers are not obligated to endanger themselves. Certainly, this approach should have not been presented so decisively as representing “Jewish law”. In fact, a sensitive reading of Waldenberg’s text may suggest that he implicitly was aware of the fact that his ruling is innovative. Interestingly, before Waldenberg concludes his ruling, he recommends that when physicians treat a patient with a contagious disease, they should say a special prayer that ask God to not consider their self-endangerment as a sin. If there was an obvious and well-established obligation to provide treatment in such situations according to Jewish law, why would God perceive it as a sin?

Last but not least, Solnica *et al.*’s over-generalised approach is equally disturbing with regard to their perception relating to “modern secular approaches”. A serious philosophical discussion pertaining to healthcare workers’ duty to treat in the context of pandemics is beyond the scope

of this article. However, it would be sufficient to note that there is no “modern secular” ethical consensus that physicians are obligated “to care for all patients even those with communicable diseases” in the context of pandemics. In fact, it may be argued that the various grounds for asserting such a duty are unconvincing and insufficient.<sup>10</sup>

In summary, it is appropriate to argue that Jewish law looks favourably, even admirably, on healthcare workers who take a reasonable risk in treating their patients in the context of pandemics. However, it is considered a supererogatory—not obligatory—act. This is a critical difference. It is crucial to make this point of discernment since healthcare workers may feel compelled to act in precisely this manner—placing themselves at a significant risk as if it were a divine or religious obligation. This is not the case, at least according to mainstream Jewish law scholars. It seems practically impossible and improper to obligate physicians to treat a patient when there is a realistic and pending serious danger to themselves directly emanating from treating the patient. Solnica *et al.*’s viewpoint may express a legitimate ethical viewpoint. However, it does not seem to represent the mainstream approach of what Jewish law would demand as obligatory from its practitioners.

At times of pandemics, there might be a powerful social pressure on healthcare workers to provide treatment at all cost, including in situations that entail serious risks. As opposed to ordinary times, in which patients are those who usually require maximal protection, during epidemics healthcare workers’ rights and interests need to be protected as well. Bioethicists, among others, are required to ensure that every patient receives proper treatment. At the same time, it is crucial to make sure that healthcare workers, who usually tend to be intrinsically motivated by a benevolent spirit, are not exposed to highly risky, unrealistic and unfair duties.

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## REFERENCES

- 1 Solnica A, Barski L, Jotkowitz A. The healthcare worker at risk during the COVID-19 pandemic: a Jewish ethical perspective. *J Med Ethics* 2020;**46**(7):441–3.
- 2 Waldenberg RE. *Responsa Tzitz Eliezer volume 9, chapter 17, paragraph 5*. Jerusalem, 1967.
- 3 Steinberg A. Risky treatments: a Jewish medical ethics perspective. *Rambam Maimonides Med J* 2015;**6**(3):e0032.
- 4 Gold A. *On miracles and nature, a philosophical analysis of Jewish law*. Bar-Ilan University Press: Ramat Gan, 2014: 158–213.
- 5 Steinberg A, Rosner F. *Encyclopedia of Jewish medical ethics: a compilation of Jewish medical law on all topics of medical interest*. Jerusalem: Feldheim Publishers, 2003: 1024–33.
- 6 Steinberg A, Rosner F. *Encyclopedia of Jewish medical ethics: a compilation of Jewish medical law on all topics of medical interest*. Jerusalem: Feldheim Publishers, 2003: 903–8.
- 7 Kagan ha-Kohen IM. *Mishnah Berurah*. 329:19. Bet Shemesh: Machon Ohr Olam, 2012.
- 8 Isserles M. *She'elot u-teshuvot ha-Rema*. 20. Yerushalayim: Yerid ha-sefarim, 2004.
- 9 Isserles M. *Shulchan Aruch Yoreh De'ah*. 116:5. Jerusalem: Machon Yerushalayim, 2010.
- 10 Malm H, May T, Francis LP, *et al*. Ethics, pandemics, and the duty to treat. *Am J Bioeth* 2008;**8**(8):4–19.