

Rav Tendler on *Brit Milah*: Keep It Clean or Risk Herpes

In a struggle to keep a tradition based on custom rather than *halacha*, some segments of the hareidi world have taken on Rabbi Dr. Moshe Tendler. But, in this controversy over the correct way to conduct a *brit milah*, Rabbi Tendler has some powerful allies, including the New York City and State Departments of Health.

Because they cannot attack the health departments, some outraged hareidim have launched an assault on Rabbi Tendler. This has meant verbal vituperations, especially in the pages of some hareidi publications, and, in at least two cases, physical violence, leading to property damage and the necessity to call in the police.

The dispute focuses on a procedure known as *metzizeh bi peh*, in which the mohel

suctions blood from the baby's genitals directly with his mouth after the circumcision is completed.

The problem with the procedure is that it increases the likelihood that the infant can contract herpes from the mohel's mouth. While in an adult, the virus usually causes nothing more serious than a cold sore, in an infant, whose immune system is fragile, it can lead to brain damage and death.

Over the past 18 months, three Jewish male infants in New York contracted the virus after being circumcised by the same mohel. One of them died.

Part of the Procedure

Suctioning the blood is an integral part of the *brit milah* ritual, but since the mid-19th century, the procedure has usually been accom-

plished through the use of a sterile tube rather than by placing the mouth directly on the genitals.

"The Talmud requires that blood be sucked from the wound during circumcision, but not that it be done by mouth," said Rabbi Tendler, a *posek*, spiritual leader of the Community Synagogue in Monsey, rosh yeshiva of RIETS of Yeshiva University, bioethicist, and professor of Biology at YU.

Fear of passing of microbes between mohel and baby is nothing new. In the mid-19th century, the Polish government forbade the practice when a popular mohel developed a tooth abscess and, as a result, a baby died after circumcision.

According to most reports, the community adjusted to the ruling, and even the highly revered *posek*, Rabbi Moshe Sofer, better known as *Chasam Sofer*, approved of using the tube for circumcisions when there was a danger to the child.

At the peak of the AIDS epidemic in 1989, the venerable Rabbi Yosef Sholom Eliyashev in Jerusalem ruled against *metzizeh bi peh*, claiming it would not be safe for the mohel, who could run the risk of becoming infected

with the HIV virus which causes the disease.

Preventing Torah?

In most Jewish communities, including the Orthodox, the practice of oral suctioning has been almost entirely replaced by the use of disposable tubes, which eliminates the problem of viruses and bacteria.

In some hareidi, especially chassidic, communities, however, the old practice continues, and the mohel who performed the circumcisions on the babies who developed herpes shows no inclination to relinquish the tradition.

According to members of the Satmar community, their religious officials consider *metzizeh bi peh* to be as integral a part of circumcision as the removal of the foreskin itself.

"If you attack this procedure, they take it as an attack on *brit milah* and say you are preventing G-d's Torah. The truth is they are holding on to it because they mistakenly believe it is a sign of their *frumkeit*," said Rabbi Tendler.

He maintained that, today, *metzizeh bi peh* violates Jewish law.

"I protest the use of oral suction as violating good

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medical practice, which is required under Jewish law. Halacha recognizes there has been an increase in knowledge of hygiene and medical advances over the centuries. It is not a lack of respect for the traditions or Jewish law to use a tube," he said.

Professional Journal

In August 2004, Rabbi Tendler co-authored a study for the prestigious journal *Pediatrics* in which he and his 11 co-authors, most of them pediatricians from the US and Israel, concluded that *metzizeh bi peh* puts infants at much greater risk for contracting herpes and should be eliminated. The study surveyed eight cases of infants who contracted herpes after oral suctioning during a *brit*.

The authors noted that the Talmud requires oral suctioning because, at the time it was written, doing so was considered sound medical practice. Later rabbinical authorities, the authors found, modified their approach as they developed new understandings of hygiene and transmission of disease.

"The same consideration that led the Talmudic sages once to establish the custom of the *metzizeh bi peh* for the sake of the infant could now be applied to persuade the mohel

to use instrumental suction," the study concluded.

Staten Island

A few months after the study was published, in November 2004, Rabbi Tendler was called by a pediatrician in Staten Island, concerned about a young patient who had developed herpes about a week after his *brit*.

The pediatrician called Rabbi Tendler because the rav and the mohel, Rabbi Yitzchok Fischer, both resided in Monsey. The pediatrician wanted Rabbi Tendler to instruct Rabbi Fischer, a Satmar chassid, to have himself checked out medically to make certain he was not harboring the virus and transmitting it to other infants.

Rabbi Fischer told Rabbi Tendler that he had seen a physician and had been assured that he did not have a herpes infection.

As is required by law in New York, the pediatrician notified the NYC Health Department, but because it seemed to be an isolated incident, there was no follow up.

Maimonides

Unbeknownst to Rabbi Tendler, even earlier in November 2004, tragedy had struck after Rabbi Fischer performed *brit milah* on twin boys in Brooklyn. Ten days



Rabbi Moshe Tendler

later, the infants were taken to Maimonides Hospital where they were both diagnosed with herpes simplex. One of them died.

Maimonides officials notified the Health Department, and a simple investigation made it clear that the unifying factor in all three cases was the 66-year-old Rabbi Fischer.

Greatly concerned, the city asked Rabbi Fischer to submit to a blood test, and ordered him to stop performing *metzizeh bi peh* while waiting for the results. Officials told him that, in the meantime, he should use a sterile tube and gloves when performing *brissim*.

Upstate New York
Rockland and Orange

County Health Commissioners Dr. Joan Facelle and Dr. Jean Hudson, respectively, prohibited Rabbi Fischer from performing *metzizeh bi peh* in those areas as well.

Dr. Facelle also ordered Rabbi Fischer to take a blood test, noting that, if he refused, the county would take him to court.

Assistant Rockland County Attorney Thomas Walsh, who is assigned to the Health Department, said the county would probably initiate an investigation into the children Rabbi Fischer has circumcised in Rockland.

No one knows how many babies Rabbi Fischer has circumcised in Rockland, but the estimate is in the thousands. Over the years, he is reputed to have circumcised tens of thousands of children in the New York area, in Israel, and in the former Soviet Union. Some say, even during this controversy, he has continued to circumcise hundreds of infants.

Formal Complaint

When the NYC Health Department received a report showing that Rabbi Fischer
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had declined to follow the order, the department's attorneys filed a formal complaint against him, noting that his "conduct to date constitutes a threat to the public health."

"This particular practice, which involves contact between the mouth and the recently circumcised genitals, does, we believe, carry inherent risks," said Thomas Friedan, NYC Health Commissioner.

When the case was picked up by the media in early February 2005, segments of the hareidi community blamed Rabbi Tendler. He was vilified for contributing to the *Pediatrics* article in the first place and accused of reporting Rabbi Fischer to the authorities, which the chassidim said was a violation of Jewish law.

Asked about the charge, Rabbi Tendler laughed. "First

of all, I didn't file the report on Rabbi Fischer; the Health Department did. I didn't even know about the twin boys at Maimonides until I read about it in the newspaper. But if I had known that he had herpes and was still performing *brit milah* using *metzizeh bi peh*, I would have reported him. It would have been a matter of *pikuaf nefesh*, saving a life," he said.

Complying

According to Rabbi Fischer's attorney, Mark Kurzmann of Pearl River, the mohel is cooperating with the city's and counties' investigations.

"Rabbi Fischer is still performing circumcisions, but he is complying with the court's direction," said Mr. Kurzmann.

Citing medical confidentiality, Mr. Kurzmann declined to say whether the rabbi would submit to the re-

quired blood tests.

"The source of the children's herpes has not been confirmed, and it all may have been an unfortunate coincidence," said Mr. Kurzmann.

He said his client, who was trained at the London-based British Milah Society, is known internationally as "a caring, skilled, and conscientious mohel" and suggested the babies "could have contracted herpes elsewhere."

Double Standard

He insisted Rabbi Fischer performed the traditional, chassidic circumcision only at the parents' request and that he uses sterilized instruments and "antiseptic mouthwash."

According to a report in the New York *Jewish Week*, Mr. Kurtzmann said when parents do not request *metzizeh bi peh*, Rabbi Fischer uses the techniques more commonly utilized by non-hareidi mohelim, that is he uses the tube or gently wipes the area with a piece of gauze, and, in the process, creates sufficient suction to draw away residual blood.

Rabbi Tendler saw the inconsistency. "If *metzizeh bi peh* is required, according to the Satmar, then when Fischer performs a more ordinary *brit milah*, he is violating Jewish law. He can't have it both ways," he said.

Test Results

By the middle of February, the Rockland County *Journal News* reported that the New York State Health Department had received Rabbi Fischer's herpes test results, but, said Robert Kenney, a state Health Department spokesman, they were for "internal use only."

According to the *Journal News*, Rabbi Fischer is facing

court procedures in Rockland County and NYC to prohibit him from performing *brit milah* at all until the case is resolved.

Gabriel Taussig, chief of the administrative law division of the NYC Law Department, confirmed that the city had complied with a subpoena it received from Rockland County, but he, too, declined to discuss Rabbi Fischer's test results.

No Regulations

Mr. Kurzmann called *metzizeh bi peh* "an integral part of the religious practice for thousands of years" and said there were concerns about the government's "attempt to regulate religious rituals."

In fact, city, county, and state health officials in New York do not license mohels or oversee circumcisions because it is a religious ritual. No one claimed Rabbi Fischer's technique was illegal, but officials said they had to take civil action to protect the health of newborns.

In Orange County, Dr. Hudson said she planned to meet with the Jewish community, specifically the Satmars of Kiryas Joel in Monroe.

"We're preparing to alert the chassidic community that this circumcision practice is not hygienic and has potential risks," she said.

Hundreds of Thousands

Mr. Kurzmann made clear that Rabbi Fischer would not be impressed.

"There have been hundreds of thousands of babies who have undergone this ritual, and the incidence of herpes is virtually nil," said Mr. Kurzmann, adding that his client wants very much to determine "the true source of the infection."

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Rabbi Avi Shafran, director of public affairs for Agudath Israel of America, an advocacy group for Orthodox Jews, said that while the practice of suctioning blood by mouth is rare, chassidic communities that believe it is important are unlikely to relinquish it.

"In most communities, it is not done this way, but in many it is a religious tradition of many generations. I understand that what may have happened in this case is exceedingly rare. Pediatricians in communities where this is done as a matter of course have told us that they have never seen a case like this, ever. Jews have been circumcising their sons for quite a while, and this is getting attention because it is so unusual," he said.

More Than Surgeons

Crown Heights-based mohel Rabbi Israel Heller, a Lubavitcher who serves as the official mohel of Methodist Hospital in Park Slope, Brooklyn, insisted that he was taught to use his mouth for medical purposes.

"The saliva cleans wounds. G-d gave us saliva in our mouths to clean things," he said, adding that he, "like all good mohelim," has himself tested every three months for diseases, including HIV, hepatitis, and herpes.

"We check ourselves more than surgeons check themselves," he said, adding that if he has any kind of pimple or sore in his mouth, he asks another mohel to perform the brit milah for him.

Frowning on Tradition?

Monsey Rabbi David Eidensohn said the spreading



of disease is rare through the oral suction method. Rabbi Tendler's position, he said, "represents people frowning on our traditions."

"If herpes infections happened regularly or even occasionally, we would be the first to stop the practice ourselves. We don't want to kill our children. This is a tragedy for the families," he said.

Rabbi Tendler had another interpretation. He suggested the danger is that the herpes virus is mutating, and that the Jewish community

can expect to see many more cases of the disease unless the practice stops.

"Herpes can spread through saliva and even fingers, making aseptic techniques more important than ever," he said.

Fighting in the Papers

The hareidim who ar-

ayed themselves against Rabbi Tendler fell into two categories. On one hand, there were those who attacked him verbally. The nicest term the hareidi newspaper, *Yatid Ne'eman*, called Rabbi Tendler was an antisemite. One article accused him of trying to stop *brit milah* from being performed in the US.

When Rabbi Tendler pointed out that even Rabbi Eliyashev had ruled against *metzizeh bi peh* to prevent mohels from contracting AIDS, some hareidim contacted the venerable 92-year-old sage and convinced him to write a *psak* saying he had spoken to doctors and was convinced that *metzizeh bi peh* posed no risk to infants and that herpes was not so dangerous anyway.

Rabbi Tendler responded by explaining that herpes is as dangerous to infants as AIDS is to mohels. "There was never a documented case

of a mohel contracting AIDS from an infant, but we now have at least 11 cases of infants contracting herpes," said Rabbi Tendler.

While in New York, cases of herpes in infants must be reported to the health department, there is no such law in New Jersey. Since Rabbi Fischer has performed circumcisions in New Jersey, there is no way of knowing if any infants were infected in the Garden State.

Vandalism

Unimpressed with Rabbi Tendler's argument, a group of Satmar chassidim distributed flyers in Monsey last month, declaring Rabbi Tendler an antisemite who opposes ritual circumcisions, and inviting all interested people to descend on his home for a demonstration.

On the day of the scheduled demonstration, Rabbi Tendler took his wife, Sifra, to Long Island to visit their children and ten grandchildren. When he called neighbors to see how his house was holding up, he was told the Satmars never showed up.

But a group of people, who Rabbi Tendler's congregants at the Community Synagogue believe are members of the Satmar community, trespassed onto shul property across the street from the rabbi's home and destroyed an Israeli and American flag.

On another occasion, the shul's door was broken and the flyers condemning Rabbi Tendler were scattered on the floor.

In both cases, community members were able to take down the license plate numbers of the cars transporting the vandals, and a complaint with that information has been filed with the police. S.L.R.

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