Oral Suction and Ritual Circumcision, Public Health, and the First Amendment of the Constitution–A New York Story

Jonathan Zenilman MD
Professor of Medicine
Objectives

• Briefly review HSV epidemiology
• Describe the Epidemiology of MBP related Neonatal HSV
• Interventions and Policy Issues
• Public Health vs Individual Freedoms
Metziza

- Brit Mila (Ritual Circumcision) on Day 8 -Torah
- Talmudic Reference to Metziza: *Talmud Bavli, Shabbat 133a (no mention of b’peh)*
- Rambam: “One draws out the *milah until the blood comes out of the distant places, so that no danger shall prevail.*” *(yad-Hilkhot Mila 2.2)*

*Reference: Sprecher--*Mezî.za h be-Peh—*Therapeutic Touch or Hippocratic Vestige?* Hakira-The Flatbush Journal of Jewish Law and Thought. Brooklyn NY*
City Questions Circumcision Ritual After Baby Dies

Mayor Michael R. Bloomberg met with Orthodox leaders and health officials at City Hall on Aug. 11 to discuss a practice that some rabbis consider integral to God’s covenant with the Jews requiring circumcision.

By ANDY NEWMAN
Published: August 28, 2005
City Risking Babies' Lives With Brit Policy: Health Experts

Renowned authorities, one at Bloomberg-named medical school, blast mayor’s administration over controversial circumcision practice.
Debra Nussbaum Cohen - Staff Writer

A renowned expert on sexually transmitted disease denounced as "outrageous" this week the Bloomberg administration’s failure to ban New York City mohels from suctioning blood with their mouths from a baby’s penis in the circumcision rite.

"[It] is a major public health hazard," declared Dr. Jonathan Zenilman, a professor of epidemiology at the Bloomberg School of Public Health — the Johns Hopkins University education and research center named for New York’s philanthropist mayor, its biggest financial supporter.

Zenilman, who grew up in an Orthodox family in Woodmere, L.I., warned that allowing the practice known as metzitzah b’peh “is actually crazy” due to the potentially fatal danger of transmitting herpes to vulnerable newborns.

A prominent colleague, Dr. John Santelli, chair of the Department of Population and Family Health at Columbia University’s Mailman School of Public Health, joined the criticism.

"Those kids are at very high risk of death and encephalitis," he said.
Public Health (IOM)

- Assessment
- Assurance
- Policy Development
- Communication
Primary Genital Herpes Simplex Infection Associated with Jewish Ritual Circumcision

Rotem Distel MD, Vered Hofer MD, Sarah Bogger-Goren MD, Itamar Shalit MD and Ben Zion Garty MD

Department of Pediatrics B and Infectious Disease Unit, Schneider Children’s Medical Center of Israel, Petah Tiqva, Israel
Affiliated to Sackler Faculty of Medicine, Tel Aviv University, Ramat Aviv, Israel

Key words: herpes simplex virus, circumcision, orogenital contact

[A] Vesicular lesions on the penis.

[B] Lesions on the buttocks.
Case Report

- Brit Milah at 8 days
- Lesion onset at 18 days
- HSV-1 by culture and seroconversion
- Both parents HSV1 negative
- Serological exam refused by mohel
- Mucocutaneous recurrences thereafter
Herpes Simplex Virus

- Double Stranded DNA virus
- Clinical characteristics of latency, recurrence
- Infection is lifelong
- Latency in Dorsal root ganglia or trigeminal ganglia (oral)
From NEJM 2000; 342:638
Herpes Simplex

- HSV-1 Prevalence 30-80%
- HSV-2 Prevalence 18-20%, dependent on sexual behavior, ethnicity, SES
- Mucosal Shedding
- Most new infections are from an asymptomatic source partner
### Viral Shedding Patterns in Women

**Subject 1: HSV-2 seropositive**

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**Subject 2: HSV-2 seropositive**

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**Subject 4: HSV-2 seropositive**

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Oral Shedding of HSV1


- Review of medical and dental literature 1953-2006
- HSV1 found in 6.3% of asymptomatic persons, independent of serology
- Detection dependent on frequency of testing and assay
- Detection in up to 71% of seropositives
- Average duration 3 days
Neonatal Herpes--Transmission

• Primary infection of newborn
• Highest risk—Primary infection in third trimester pregnancy
• Maternal antibody appears protective
• Exposure in recurrent cases (mom)-in birth canal
• Incubation period up to 4 weeks, median 6-7 days in primary exposure cases
Genital Herpes: Pregnancy and Neonatal Consequences

Neonatal infection

• Localized disease
  – Relatively mild in most cases
  – May progress to involve the CNS or to disseminated disease
  – About 30% of infants with localized disease may develop neurologic sequelae (spasticity, developmental delay, blindness)
  – No associated mortality
Genital Herpes: Pregnancy and Neonatal Consequences

Neonatal disease

• CNS disease
  – Encephalitis - poor feeding, difficulty with temperature regulation, irritability, lethargy, and seizures
  – Mortality from CNS disease has been reported as 15%

• Disseminated disease
  – Sepsis-like syndrome - irritability, seizures, respiratory distress, bleeding diathesis, and shock
  – More than half of these infants die, most often due to pneumonitis and disseminated intravascular coagulation
2 cases NYC (Queens—Long Island Jewish Hospital—1988, 1998

Pediatrics, 2004 -8 cases reported from Israel (Soroka and multiple others).

Cases of post-circumcision HSV—all had metziza
Timeline

• November 2004—NYCDOH learns of linked HSV cases with Mohel#1
• Fall 2005—NYC considers regulation
• October 2005—Agreement with Haredim to have Beit Din consider the issue with the Mohel
• November 2005—Mayoral Election
• December 2006—NYC Health Commissioner Frieden orders:
  – Educational materials to be distributed to new mothers
  – Recommending pipette procedure
  – Neonatal HSV becomes reportable
December 13, 2005

2005 Health Alert #46: Neonatal herpes infection with herpes simplex virus type 1 following circumcision with oral suctioning (metzitzah b’peh)

- The Health Department has documented 7 cases of neonatal herpes infection with herpes simplex virus type 1, including 5 cases in the past 2 years apparently linked to the religious practice of metzitzah b’peh.
- One baby died, and another suffered brain damage.
- Three of the infants were circumcised by a single mohel.
- *Metzitzah b’peh* is a practice performed by some mohelim (religious circumcisers) in the Jewish community wherein the mohel places his mouth on the freshly circumcised penis to draw blood away from the cut.
- Providers should suspect herpes infection in male infants presenting with vesicular lesions on the genitals, perineum, buttocks, or related dermatomes in the weeks after circumcision.
- Neonates suspected to have herpes infections should be hospitalized immediately and treated with intravenous acyclovir.
- Notify the Department of Health within 24 hours of diagnosis of any cases of herpes infection following circumcision as such would be unusual manifestations of disease (Neonatal herpes desk: 212-788-4423). The New York City Board of Health is also considering mandating reporting of all cases of neonatal herpes.
Before the Bris: How to Protect Your Infant Against Herpes Virus Infection Caused by metzitzah b’peh

An Open Letter to the Jewish Community from the New York City Health Commissioner

Circumcision has health benefits. Recently, however, the Health Department has documented several cases of herpes infection in newborns after circumcisions that included metzitzah b’peh. Metzitzah b’peh is a religious practice performed by some mohelim (religious circumcisers) in the Jewish community. Some of these infants became seriously ill. One baby died, and another suffered brain damage.

Because there is no proven way to reduce the risk of herpes infection posed by metzitzah b’peh, the Health Department recommends that infants being circumcised not undergo metzitzah b’peh.
Experts claim that the pipette, although better than the gauze which the Aruch L’ner prohibited, also cannot perform a suction that is as effective as direct oral contact. Often, air enters the tube while performing the metzitzah which prevents sufficient blood from being drawn. Only in a vacuum sealed suction, such as suction with one’s mouth, can this be accomplished.  

Additionally, there are medical advantages for the wound to come into direct contact with the saliva in the mohel’s mouth. Saliva is known to have certain wondrous chemical properties and is widely reported as a natural antiseptic. Additionally, the proteins contained in saliva are said to aid in the healing of wounds. Indeed, it is the instinctive reaction of a person who cuts his finger to put it into his mouth which alleviates the pain.

We would be remiss if we were to imply that the opinion of all gedolei Yisroel was that metzitzah b’peh is required, and only in pressing situations of imminent danger or under coercion from tyrant dictatorships were they lenient. There were definitely rabbonim, albeit few, who main-
Comment on Gesundheit et al

The aforementioned medical journal article attempts to establish a connection between eight infants who experienced an outbreak of herpes on the milah area shortly after their brisos which was done by a mohel who performed metzitzah b’peh. This pretense was surmised without any corroborating evidence, and was based on mere speculations as the article itself inconspicuously admits.

The eight infants were collected from personal communication with the doctors involved. It spanned a time period of six years from 1997-2003. The study did not seem to look at all cases of neonatal herpes in these institutions over this time period to see if other cases were discovered which did not involve metzitzah b’peh and must have originated from elsewhere. Rather, it seems that only the few isolated incidents involving metzitzah b’peh were sought after and collected to impress upon the reader the danger involved.

There was not any conclusive evidence linking the mohalim in those cases to the virus transmissions. Generally, DNA analysis is used to establish such a definitive connection. The entire article, however, is replete with biased speculations. The speculations are based on the following indications: exclusive distribution of the herpes virus on the milah area, timing of appearance (4-11 days after the bris), absence of HSV exposure in mothers and absence of clinical signs consistent with HSV infections among family members.
Orthodox leaders are so infuriated by the city's educational efforts that some threatened to protest at the mayor's inauguration wearing yellow Stars of David.

In other words, some Jewish New Yorkers were ready to display a symbol of Nazi persecution at City Hall because the health department issued advice to parents about a procedure than can kill babies.
Is Ritual Circumcision Religious Expression?

By JEFFREY ROSEN

Americans pride themselves on their commitment to freedom of religion, but how much religious freedom is too much religious freedom? At the moment, the thorniest dispute over the issue concerns the male-circumcision ritual practiced by some Hasidic Jews in New York. The ritual is called oral suction circumcision, and it involves the suctioning of a male's penis in order to incise a circular incision on the
Milah Shiur January 2004 Given by Rabbi Tendler in Yeshiva University

For full text, please visit the Board of Rabbis for Insuring Sacredness website.

Facts:

- Has been practiced as an integral part of the bris milah in the years from the days of Moses. Anyone attacking the practice ofbris milah is a traitor to Judaism.
- The issue today is not whether one should or should not practice bris milah. The issue is of someone attacking the practice. Anyone intending to use the government to regulate any aspect of bris milah is in fact seeking to violate the religious rights of those who practice it.
Believe it or not, this is not new!
In the 1840s, rabbis in Vienna allowed the use of a pipette for Metziza. In fact, many in Vilna and others did not perform metziza
אותה גרדלה
מאת דבון והאולמות יחדיו
ضرورة זה
יתכן שהמ 작업ה יכלה יותר בחודש ילאומי
ספירה והתוכנות של ת""ל
כד חורב שמתחרה

ברוחה כיו צא עתה עדה פרה לפשיטה הדרכה של
בתרוייתו סעדי דני פביה

לעשותה בטוח על כל 소개יה

וזהويد מה שיאי צ'אורא יועד לעשות הדרכה
בכפול מ sıra מקס תוקן עזרה בשנית
בכל שדה +

בכל המעשים אך בברוח מחסנית
בככל המעשים אך ברוח המחשים בשנית
בכפל מ sıra מקס תוקן עזרה בשנית
בכל שדה +

 Akron ספירה
Saratoga ספירה
Saratoga ספירה
Yoshua שילג מכז الشركة (א)
Tertisapparatus עם חלופה: השפעת (א) או המצעות
יושעם נגר מייצצת ב פרשת (ג).
New York Medical Journal:
A Monthly Record of
Medicine and the Collateral Sciences.


Original Communications.

Art. I.—On the Question of the Transmission of Syphilitic Contagion in the Rite of Circumcision.¹ By R. W. Taylor, M. D., Surgeon to the New York Dispensary, Department of Venereal and Skin Diseases.

The question of the possible occurrence of syphilis in the religious rite of circumcision is one, I think, which may be said to be as yet in a wholly unsettled state, and one which for obvious reasons possesses points of the greatest interest. Though this source of syphilitic contagion is mentioned by
As you know, there were four Jewish children, previously healthy; who, after circumcision by a Hebrew named II—, were attacked by phagedenic ulceration of the penis, and by lesions of the skin and lymphatic ganglia, accompanied, in three of the cases, with exhaustion which resulted in death. The questions which arise, and they are of great importance in their social, sanitary, and medico-legal bearings, are: What is the nature of the disease with which these children were afflicted? In what manner was the disease communicated; or how did it originate? What means can we take to prevent similar cases of disease in future?
TUBERCULOSIS ACQUIRED THROUGH RITUAL CIRCUMCISION

L. EMMETT HOLT, M.D.
Professor of Diseases of Children, Columbia University

NEW YORK

Tuberculosis by direct wound inoculation while not a frequent method of contracting.
TUBERCULOSIS OF THE PENIS: A REPORT OF 5 NEW CASES, AND A COMPLETE REVIEW OF THE LITERATURE

EVAN L. LEWIS

From the James Buchanan Brady Urological Institute, Johns Hopkins Hospital, Baltimore

tuberculous ulcerations of the penis that we are interested in at this time.

In a comprehensive review of the literature there have been found 110 cases of penile tuberculosis. Of these 89 are primary, 9 not stated, 8 secondary, 1 undetermined, and 3 hematogenous (table 1).

Of the 89 primary cases, 72 are the result of ritual circumcision in Jewish infants. The actual incidence of tuberculosis of the penis following this rite was much higher than a review of the literature would indicate. Part of the ritual consisted of the Mohel sucking the circumcized penis in the act of the Mezizah. The purpose of this act, which was compulsory, as described in the Camera by Rev. Rav. Pope in the 5th Century and later by Joseph Karo and Maimonedge in the Beth Joseph of the 12th century, was as a hemostatic and styptic. Syphilis and diphtheria have also been contracted through this act. After the turn of the last century this act was practically eliminated from the ritual so that tuberculosis of the penis is seen only rarely now.
KEY RESPONSE OF NYCDOH IN 2006

NEONATAL HSV BECOMES REPORTABLE
Estimates of Neonatal HSV in US

- 2006 CDC National—9.6/100,000 births Weinstock; *Pediatrics* January 2011
- Netherlands 2.0-2.9 (1990-98); Validation study 1999-2005—3.2/100,000 (Poeran, J Clin Virol; Aug 2008)
- Managed Care 1997-2002; Rate=12.9; 30% cases not lab confirmed (Xu *Sex Transm Dis* June 2008)
- NYC 2006-10—13.3—EQUAL PROPORTION HSV1/HSV2 (Handel STD, Aug 2011)
Population-Based Surveillance for Neonatal Herpes in New York City, April 2006–September 2010

Shoshanna Handel, MPH,*† Ellen J. Klingler, MPH,† Kate Washburn, MPH,† Susan Blank, MD, MPH,†‡ and Julia A. Schillinger, MD, MSc†‡
Exposure Opportunity?
NYC HSV 1 Seroprevalence

- NYC-HANES—population based survey, 2004
- Male seroprevalence
  - 20-29: 49.9%
  - 30-39: 67.5%
  - 40-49: 75.0%
  - 50-59: 72.8%
  - 60-69: 82.8%
  - >70: 83%

Source—NYC Health Department
# Neonatal Herpes Simplex Virus Infection Following Jewish Ritual Circumcisions that Included Direct Orogenital Suction — New York City, 2000–2011

## TABLE 2. Number of reported cases of laboratory-confirmed neonatal herpes simplex virus type 1 (HSV-1) or untyped HSV infection among male infants aged ≤60 days, by exposure status — New York City, April 2006–December 2011

<table>
<thead>
<tr>
<th>Exposure</th>
<th>No. of cases of male HSV-1 or untyped HSV infection</th>
<th>Estimated male infant population at risk</th>
<th>Rate per 100,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ritual circumcision with confirmed or probable direct orogenital suction</td>
<td>5</td>
<td>20,493</td>
<td>24.4</td>
</tr>
<tr>
<td>Unlikely to have had direct orogenital suction</td>
<td>25</td>
<td>352,411</td>
<td>7.1</td>
</tr>
<tr>
<td>Total</td>
<td>30</td>
<td>372,904</td>
<td>8.0</td>
</tr>
</tbody>
</table>

Sources: New York City mandatory reporting of cases by laboratories.
New York State Education Department, Information and Reporting Services. Basic educational data system. Albany, NY: New York State Education Department.
<table>
<thead>
<tr>
<th>Case no.</th>
<th>Patient</th>
<th>Year</th>
<th>Admitting hospital</th>
<th>Genital/Perineal lesions?</th>
<th>HSV type</th>
<th>Died?</th>
<th>Clinical syndrome</th>
<th>Direct orogenital suction status*</th>
<th>Mohel</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>2000</td>
<td>Hospital A</td>
<td>Yes</td>
<td>Untyped</td>
<td>No</td>
<td>SEM</td>
<td>Probable</td>
<td>Unknown</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td>2003</td>
<td>Hospital B</td>
<td>Yes</td>
<td>HSV-1</td>
<td>No</td>
<td>SEM</td>
<td>Confirmed</td>
<td>Mohel A</td>
</tr>
<tr>
<td>3</td>
<td>Twin A</td>
<td>2004</td>
<td>Hospital C</td>
<td>Yes</td>
<td>HSV-1</td>
<td>Yes</td>
<td>Disseminated</td>
<td>Confirmed</td>
<td>Mohel A</td>
</tr>
<tr>
<td>4</td>
<td>Twin B</td>
<td>2004</td>
<td>Hospital C</td>
<td>Yes</td>
<td>HSV-1</td>
<td>No</td>
<td>Disseminated</td>
<td>Confirmed</td>
<td>Mohel A</td>
</tr>
<tr>
<td>5</td>
<td></td>
<td>2005</td>
<td>None (treated as outpatient)</td>
<td>Yes</td>
<td>HSV-1</td>
<td>No</td>
<td>SEM</td>
<td>Confirmed</td>
<td>Mohel B</td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>2005</td>
<td>Hospital C</td>
<td>Yes</td>
<td>HSV-1</td>
<td>No</td>
<td>CNS</td>
<td>Probable</td>
<td>Unknown</td>
</tr>
<tr>
<td>7</td>
<td></td>
<td>2006</td>
<td>Hospital D</td>
<td>Yes</td>
<td>Untyped</td>
<td>No</td>
<td>SEM</td>
<td>Confirmed</td>
<td>Mohel C</td>
</tr>
<tr>
<td>8</td>
<td>Sibling A†</td>
<td>2008</td>
<td>Hospital C</td>
<td>Yes</td>
<td>HSV-1</td>
<td>No</td>
<td>CNS</td>
<td>Probable</td>
<td>Mohel X</td>
</tr>
<tr>
<td>9</td>
<td></td>
<td>2008</td>
<td>Hospital C</td>
<td>Yes</td>
<td>HSV-1</td>
<td>No</td>
<td>SEM</td>
<td>Confirmed</td>
<td>Unknown</td>
</tr>
<tr>
<td>10</td>
<td>Sibling B†</td>
<td>2011</td>
<td>Hospital C</td>
<td>Yes</td>
<td>HSV-1</td>
<td>No</td>
<td>SEM</td>
<td>Probable</td>
<td>Mohel X</td>
</tr>
<tr>
<td>11</td>
<td></td>
<td>2011</td>
<td>Hospital C</td>
<td>Yes</td>
<td>HSV-1</td>
<td>Yes</td>
<td>Disseminated</td>
<td>Probable</td>
<td>Unknown</td>
</tr>
</tbody>
</table>

Abbreviations: SEM = skin, eye, mouth; CNS = central nervous system.
* Confirmed cases = parents reported that direct orogenital suction occurred; probable cases = parents would not directly answer questions about whether direct orogenital suction occurred, but usually stated that all male infants in their community would be expected to have had direct orogenital suction.
† Brothers born 3 years apart and circumcised by the same mohel, whom the parents declined to identify.
FIGURE. Number of days between Jewish ritual circumcision* and appearance of herpes lesions, among male infants with neonatal herpes following Jewish ritual circumcision with confirmed or probable orogenital suction — New York City, 2000–2011

* For some cases, date of circumcision was reported only as “eighth day of life,” which might differ from the age calculated by medical convention. Jewish law has various rules for scheduling circumcision; for example, circumcision might be delayed if an infant is ill.
Is Metzitza bePeh Dangerous?

By Daniel S. Berman, M.D.*

- Arguments:
- Lack of DNA fingerprinting
- Use of causality inference
- Criticisms of statistical methods
- Bias in the NYC Health Department
- Mohels can take prophylactic mouthrinse
I am sure the reader would like to ask me an obvious question: Would I have it done to my own grandson?

I was zocheh to have a grandson more than one year ago. The Bris took place in the Yeshiva University Beis Midrash, where my oldest son, the father, is studying for Semichah. The Mohel was the one under attack by New York City; his son performed the MbP; and I was the Sandak.
Conclusions

- MBP associated with increased risk
- Incubation period consistent with Brit exposure (i.e. 8-10 days longer than usual)
- All cases male
- All cases HSV1

- These exposures are not consistent with perinatal transmission
Criticisms of the NYC DoH Study

- Statistical methods (denominator)
- 3.4X increased risk – numerator impact
- Lack of DNA testing to confirm transmission
- Circumstantial/Causality
- No data from mohalim
- Low incident disease
Responses

- Epidemiological data robust
- CDC report had multiple layers of review
- Causal inference—biological plausibility, pathway, multiple documentation of cases from multiple sources
- Mohalim refused to be tested
- DNA evidence not required
- Many parents not aware
- Even low incident disease worthy of public health regulation because of fatal/severe consequences
NYC Health Action

• Propose to the Board of Health to require mohelim to inform parents of MBP and to obtain informed consent
• Aguda requests that the Mayor change meeting date because of Rosh Hashana on September 15
• Unanimously approved on Sept 13, 2012
• Some Board of Health members wanted stronger intervention
In the infectious diseases community, there is no doubt that MBP carries risk. There is unanimous consensus among leaders in the herpes field and among leaders in the infectious diseases community who study these infections that MBP has been associated with HSV transmission.

The Agudah’s objective is to clearly transmit the perception of doubt, and to use that doubt to impact public health policy. The Agudah’s position is irresponsible from the standpoint of children’s health, and supports a practice which puts children at risk.

The Agudah has framed their letter as a request to you to override the Health Department’s carefully considered policy position. Essentially, this is a request for political interference in public health practice, and political interference with a policy

The Agudah and other Haredi publications has framed this as a “religious freedom” issue. Nothing can be further from the truth. When children’s health and safety is involved, the government does have a compelling interest and responsibility to regulate.
September 12, 2012

Mayor Michael R. Bloomberg
City Hall
New York, NY 10007

Dear Mayor Bloomberg:

On behalf of the Infectious Diseases Society of America (IDSA), I am writing to express support for passage of the proposed regulation currently under consideration by the New York City Board of Health that would require written informed parental consent for circumcision that involves direct oral suction, a procedure also known as the *metzitzah b’peh* (MBP).
Denouncing City’s Move to Regulate Circumcision

By SHARON OTTERMAN

The grandmother carried the sleeping infant boy on a white pillow toward the synagogue’s altar, and passed him to her son. Her son carried the infant toward the mohel, or Jewish ritual circumciser, who stood amid a cluster of chanting men.

Board Votes to Regulate Circumcision, Citing Risks

By SHARON OTTERMAN

The New York City Board of Health passed a regulation on Thursday that will require consent from parents before an infant can have a form of Jewish ritual circumcision, prevalent in parts of the ultra-Orthodox community, in which the circumciser uses his mouth to remove blood from the incision.

In a morning meeting, the nine-member panel of doctors and public health professionals heard arguments from the Jewish community and the group Circumsation Network, which opposes the regulation.
N.Y.-area Haredim decry attempts to regulate circumcision

N.Y. Haredim are up in arms about an upcoming N.Y.C. Health Department vote that would regulate direct oral suction during circumcision.

By Debra Nussbaum Cohen | Aug 12, 2012 9:07 AM

Despite its proven health risks, Haredi leaders reject any government interference in their ancient tradition.

Photo by AP

When Rachamin "Rocky" Cohen was planning his oldest son’s brit milah, the ancient Jewish ritual of circumcision, the mohel, or ritual circumciser, asked if he wanted should use direct oral suction, known as metzitzah b’peh. Cohen, a Lubavitch Chasid who lives with his wife, two sons and a daughter in Miami, told him to do whatever he wished. The mohel didn’t use the controversial technique during that bris two years ago, but without asking again, performed metzitzah b’peh on Cohen’s younger son, now 6 months old.
More Than 200 Rabbonim Declare War On NYC Health Dept Over ‘Metzitzah B’peh’

(Thursday, August 30th, 2012)
Regardless of what it is (whether the doctors agree or not), a main tenet of our faith is that it is utterly implausible that government officials should decide how the Bris should be done!

Practically speaking, the following should be done:

1) **Publicize** to all Jews especially those who are not aware of its importance, that there is nothing to worry from Metzitzah B'peh, to the contrary, it is very beneficial even according to the doctors.

2) The Mohalim should continue the tradition of the Bris as it was until now, without changing anything at all, Heaven Forbid
Haredi community sues the NYC Health Department

Claims infringement on free exercise of religion, free speech and due process

Federal Judge (Naomi Reice Buchwald) issues injunction until hearing. Hearing originally scheduled for October 30 but delayed until early December because of hurricane
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CENTRAL RABBINICAL CONGRESS OF
THE USA & CANADA;

AGUDATH ISRAEL OF AMERICA;

INTERNATIONAL BRIS ASSOCIATION;

RABBI SAMUEL BLUM;

RABBI AHARON LEIMAN; and

RABBI SHLOIME EICHENSTEIN,

Plaintiffs,

v.

NEW YORK CITY DEPARTMENT OF
HEALTH & MENTAL HYGIENE;

NEW YORK CITY BOARD OF HEALTH;

and

DR. THOMAS FARLEY, in his official
capacity as Commissioner of the New York
City Department of Health & Mental
Hygiene,

No.: 12 CV 7590 (NRB)

ECF CASE
Don’t Fight Circumcision Law

A lawsuit against New York’s ‘oral suction’ law is misguided—and would backfire against the ultra-Orthodox

By Akiva Shapiro | September 21, 2012 7:00 AM

As an Orthodox Jew and a constitutional litigator with a history of successful suits against the city, I feel compelled to explain why the lawsuit is doomed to fail. What’s more, history shows that it will probably backfire. The more groups like Agudah oppose this law, the greater the likelihood for more government regulation of religious rituals in the future.

***
One thing’s for sure: If the Orthodox community continues to vehemently oppose this modest consent law it will encourage and likely lead to greater regulation of circumcision in the future. This is widely understood in the context of self-regulated industries. (Think baseball and steroids.)

If a group or industry agrees to moderate self-policing and 30,000-foot government oversight, the government hangs back. But if they insist on complete autonomy, creating the impression that the industry thinks it is above the law, the government inevitably steps in and imposes more stringent regulation.
The First Amendment

• The US Constitution was ratified in 1787. Soon thereafter, 10 amendments were added (known as the “Bill of Rights”) and ratified in 1791. Additional amendments were added later.

• Amending the Constitution is exceedingly difficult.

• The Federal and US Supreme Courts are the final interpreters.
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;

or abridging the freedom of speech, or of the press;

or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances
Lawsuit is filed within a week. Preliminary hearing scheduled for Oct 30, delayed because of hurricane in NY. Federal Judge issues injunction to NYC until case is decided.
Basis of the Aguda Lawsuit

• Forcing mohelim to transmit a value laden judgement is “compelled speech”… The factual records does not establish a compelling interest for the regulation....

• By singling out for unique burdens a practice that is motivated exclusively by religious belief, and requiring its practitioners to advise against those beliefs...violates the Free Exercise Clause
Free Exercise

• Congress shall make no law respecting an establishment of religion, or prohibiting free exercise

• Freedom to believe—absolute right

• Freedom to act...”conduct remains subject to regulation for the protection of society.”

(Cantwell v Connecticut 310 US 296 303 (1940))
Prior Limitations of Free Exercise

• Peyote (mescaline) use in religious practice
• Compulsory childhood vaccination for school
• Polygamy
• Christian Science and refusal to provide medical care to child
Compelled Speech

• Compulsory flag salute
• New Hampshire “Live Free or Die “ on license plates—Jehovah Witnesses disagreed
• There is no requirement to agree with the NYC Health Department message

• Pledge of Allegiance “under God”
• School Prayer
The NY Response

The protection of public health, in particular, protecting newborns from infectious diseases that could permanently disable them or cause death, is indisputably a vital state interest. The City has the authority, and indeed mandate, to regulate dangerous activity, such as direct oral suction, including the authority to ban the ritual...
Interesting points

• IDSA, PIDSA, ASTDA, JMZ letters of support occurred before public hearing and lawsuit

• At hearing:

"[L]eaders in the field of infectious diseases, in pediatrics, in public health, all agree that herpes virus can be transmitted during direct oral suction. There are institutions that have either published statements or written letters to the Mayor, in fact, including the Centers for Disease Control, the American Academy of Pediatrics, the Infectious Disease[s] Society of America and the Pediatric Infectious Disease[s] Society of America, all who come to the exact same conclusion that we have..."
Supporting Materials

• Experts for NYC--Affidavits
  – Dr. Richard Whitley, Chief of Pediatrics UAB, former President IDSA
  – Dr. Lawrence Stanberry, Chief of Pediatrics Columbia
  – Dr. Anna Wald, University of Washington
  – Dr. Jonathan Zenilman, JHU
  – Andrew Gelman, PhD –Statistician, Columbia

• Affidavits and amicus curiae brief
Judges Opinion

• Plaintiffs claim uncertainty—Judge says “strict scrutiny not required”
• Precedents of State interest in child health
• Denied Free Speech claim
• Denied Freedom of religion claim
  – Freedom of belief--absolute
  – Freedom of expression (Free Exercise) —state may regulate if there is a compelling interest
Case now on appeal

And now—there is a mayoral election in NYC!
N.Y. Mayoral Candidates Mostly Support Consent Forms for Circumcision Rite

Better Outreach to the Orthodox Community Is Needed

No Strong Stand: New York mayoral candidate John Liu, right, opposes the city’s requirement of parental consent forms for metzitza b’peh. Others, including frontrunner Christine Quinn, left, back the regulation, but say the city should do better outreach to the Orthodox community, while Bill de Blasio, center, wants to find a solution to appease both parties.
With regard to a controversial circumcision procedure (called metzitzah b’peh) that the city’s Board of Health believes is dangerous to infants, Lhota said his thinking in the matter has evolved from an initial belief that the consent decree imposed by the city but challenged in federal court was “a reasonable response.”

He now sees it as a “slippery slope” that can lead to infringement on religious practice, such as deciding that the implements used to baptize a baby are not sufficiently sanitary. “In no way, shape or form should the government get involved as long as they tell the parents what the risks are,” he said.

He said that as mayor, he would bring the circumcision issue back to the Board of Health, whose members are appointed by the mayor, with an eye toward repealing the consent decree. Whether the issue is oral suction at circumcision, supersized sodas or the salt content of food, Lhota said, the city should inform the public about risks and then step back.
Conclusion

• Public health dilemma—however it is clear that there are major education needs
• Political implications (haredim are a voting block)
• Mothers not aware of MBP
• Potential for practice to “go underground”
• What would/should be health departments next step if law is upheld? Enforcement
• Religious/Non-Haredi lawyers and physicians are supporting the health department (new dynamic? )
Lessons Learned

• There are always new challenges in public health!
• Assertive advocacy—the support of the public health groups BEFORE the lawsuit was critical
• For some groups, science may be a peripheral consideration—how to leverage
• Enforcement and Regulation is a challenge
Acknowledgements

• David Celentano for getting me into this mess!
• Drs Susan Blank, Julie Schillinger—NYCDOH
• Dr Gary Gelbfish, Brooklyn NY
• Michelle Goldberg-Cahn—NYC Law Department
• Akivah Shapiro –Gibson Dunn LLC
What would be your next step?

Jonathan Zenilman

jzenilma@jhmi.edu